

***United States Court of Appeals  
for the  
District of Columbia Circuit***



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JOINT APPENDIX

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA

No. 21,938

LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

No. 22,009

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

v.

ADAMS DRUG Co., INC.,

*Respondent,*

ON PETITIONS FOR REVIEW AND ENFORCEMENT OF  
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BY 

United States Court of Appeals  
for the District of Columbia Circuit

FILED OCT 30 1968

*Nathan J. Paulson*  
CLERK

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CHRONOLOGICAL LIST OF DOCKET ENTRIES

1. September 20, 1967 -- Charge filed in 1-CA-6084.
2. October 18, 1967 -- General Counsel's Motion for summary judgment.
3. October 18, 1967 -- Order referring motion to Trial Examiner.
4. October 20, 1967 -- Order to show cause on General Counsel's motion for summary judgment.
5. November 15, 1967 -- Respondent's, Adams Drug Co., reply to General Counsel's motion for summary judgment.
6. December 22, 1967 -- Order on motion for summary judgment.
7. December 26, 1967 -- Notice of hearing.
8. March 4, 1968 -- Trial Examiner's Decision and Order.
9. April 26, 1968 -- Decision and Order of National Labor Relations Board.
10. May 15, 1968 -- Local Union 1325, Retail Clerks International Association, AFL-CIO, Petition to Review and Modify a Decision of the National Labor Relations Board.



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF TRIAL EXAMINERS  
WASHINGTON, D. C.

ADAMS DRUG CO., INC.

and

Case No. 1-CA-6084

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION,  
AFL-CIO

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Boston, Mass., for the  
General Counsel.

Adler, Pollock & Sheehan, by  
William J. Sheehan, Esq., of  
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Angoff, Goldman, Manning & Pyle,  
by Warren H. Pyle and Stephen R.  
Domesick, Esqs., of Boston, Mass.,  
for the Charging Party.

TRIAL EXAMINER'S DECISION

Statement of the Case

DAVID S. DAVIDSON, Trial Examiner: Pursuant to charges filed on September 20, 1967, by Local 1325, Retail Clerks International Association, AFL-CIO, hereinafter referred to as the Union, a complaint was issued on October 5, 1967. The complaint alleges that following certification of the Union pursuant to a representation election conducted in Case No. 1-RC-8949, the Respondent since September 19, 1957, has refused to bargain with the Union as the exclusive representative of the employees in the unit of all employees of Respondent's retail drugstores located in the State of Rhode Island found appropriate in the representation proceeding. In its Answer, Respondent denies that the unit in which the election was conducted was an appropriate unit for purposes of collective bargaining. Respondent contends further that the Decision on Review and Direction of Election of the Board in Case No. 1-RC-8949, 164 NLRB No. 71, reversing the Decision and Order of the Regional Director dismissing the petition, was improper because the request for review was not based on any of the grounds set forth in the Board's Rule 107.67(c), because the Board's decision failed to set forth any change in standards in determining the appropriateness of the unit, and because the Board's determination of the appropriate unit was arbitrary and capricious. Respondent further alleges that the Board had

improperly dismissed without a hearing Objections to Conduct Affecting Results of Election based on conduct which interfered with a fair election and constituted grounds for setting aside the election on which the Union's certification was based. Respondent denies the commission of any unfair labor practices.

On October 18, 1967, counsel for the General Counsel filed a Motion for Summary Judgment on the ground that there were no issues of fact requiring a hearing in this case because the issues raised by Respondent in its Answer had been fully litigated in the representation proceeding and could not be relitigated in this proceeding.

In response to an Order to Show Cause, Respondent opposed summary judgment on the ground that there was newly discovered or previously unavailable evidence concerning the matters raised in the representation proceeding in that the Board in its decision in the representation case erroneously found that all but one store of the Employer located in the State of Rhode Island were in the Providence-Pawtucket-Warwick metropolitan area as defined in Standard Metropolitan Statistical Areas, 1946 edition, as amended May 24, 1926, Bureau of the Budget, and Respondent was unable to obtain a copy of the document upon which the Board relied. Respondent also alleged that in its decision in finding the statewide unit appropriate the Board erroneously relied upon a contention of the Charging Party in the representation case, supported by an inaccurate citation, that the State of Rhode Island regulates almost every phase of drugstore operations within its jurisdiction. Finally, Respondent argued that Respondent was not afforded a hearing on its objections to the election in the representation proceeding and would be foreclosed from a hearing on its objections at any time if summary judgment were granted. Respondent also amended its Answer to allege that the Board's decision in the representation proceeding erroneously found that all the stores included in the appropriate unit were in the metropolitan area described above, with the exception of one located near its borderline.

On December 22, 1967, Trial Examiner Sidney Lindner denied the Motion for Summary Judgment and scheduled a hearing to determine the unfair labor practices alleged in the complaint. The hearing was held before me in Boston, Massachusetts, on January 29, 1968. At the close of the hearing oral argument was waived and the parties were given leave to file briefs which have been received from all the parties.

Upon the entire record in this case and from my observation of the witnesses and their demeanor, I make the following:

#### Findings and Conclusions

##### I. The Business of the Respondent

Respondent 1/ is a Rhode Island corporation with its principal place of business located in Pawtucket, Rhode Island. At all times material herein it has been engaged in the retail sale of drug products at a number of retail drugstores located in the States of Connecticut, Kansas, New York, Massachusetts, Oklahoma, and Rhode Island. During the calendar year 1966, a representative period, in the course of its business, Respondent sold and distributed drug products from which it derived a gross revenue in excess of \$500,000. During the same period Respondent purchased and received goods, materials, and supplies valued in excess of \$50,000 which were transported directly across state lines. I find that Respondent is an employer engaged in commerce within the meaning of the Act and that assertion of jurisdiction herein is warranted.

1/ Respondent's name appears in the caption as amended at the hearing.



## II. The Labor Organization Involved

Local 1325, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. The Alleged Unfair Labor Practices

### A. The Representation Proceeding

In its representation petition, the Union sought an election among the employees of all Respondent's retail drugstores in the State of Rhode Island. A hearing on the petition was held on May 11 and 26, 1966. Thereafter, on June 16, 1966, the Regional Director issued a Decision and Order dismissing the petition on the ground that the unit sought was too narrow in scope to be appropriate. Thereafter, pursuant to the Union's request the Board granted review and reversed the Regional Director's action, finding the requested unit appropriate. Adams Drug Co., Inc., 164 NLRB No. 71.

As set forth in the Board's decision, the Petitioner relied principally on the fact that the State of Rhode Island regulated almost every phase of drugstore operations within its jurisdiction, and on other evidence that the employees within the State shared a community of interest.

The facts on which the Board acted are fully set forth in its Decision on Review. In its decision, issued on May 12, 1967, the Board found that Respondent operated either directly or through wholly owned subsidiaries a chain of 83 drugstores in Rhode Island, Connecticut, New York, Kansas, and Oklahoma. Its central office and warehouse were in Pawtucket, Rhode Island. Twenty-five of the stores were in Rhode Island, all of which were in the Providence-Pawtucket-Warwick metropolitan area as described in Standard Metropolitan Statistical Areas, 1964 edition, as amended May 24, 1966, published by the Office of Statistical Standards, Bureau of the Budget, with one of them, Respondent's Wakefield store, "virtually on the boundary line of the area." As the Board also noted, Respondent has 12 stores in Massachusetts, of which one, its store in Attleboro, was in the same metropolitan area as the Rhode Island stores and 5 miles distant from the nearest Rhode Island store. Of the Massachusetts stores, two in Fall River and one in Somerset, 8 miles from the Rhode Island line, were in a separate Fall River metropolitan area. Respondent also had seven stores in Connecticut, the nearest of which was 50 miles from the Rhode Island stores. Twenty-four stores were in New York.

The Board also found that Respondent's records and payroll were centrally maintained and prepared. Much of the merchandise for the stores came from the central warehouse. Each store had a separate manager who reported to one of seven area supervisors, three of whom serviced the stores in the New England states. The stores serviced by each area supervisor did not fall into a distinct geographical pattern, but were assigned to them on the basis of other factors. A single cosmetic supervisor assisted the store managers of all the New England stores. On these facts the Board concluded that the Rhode Island stores did not comprise an administrative subdivision of Respondent's chain of stores.

The Board found further in its decision that there was uniform or centrally controlled pricing policy, advertising, hours, operating, policy, starting wages, special bonuses, and insurance benefits and some centrally controlled hiring. 2/ The Board found also that store managers

2/ Vacation policy was found to be uniform for all Rhode Island stores and five of the Massachusetts stores.



directed day to day store operations, pursuant to centrally established policy, determined the number of employees in their stores, hired sales clerks, and recommended promotions. Area supervisors visited the stores infrequently. Stockmen and pharmacists, who were centrally hired, were interchanged or transferred from store to store on occasion, but store clerks hired by store managers were rarely interchanged.

On the basis of these findings as set forth in its decision, the Board concluded:

From the foregoing, it is evident that there are a number of factors indicating, as contended by the Employer, that the store employees involved could be bargained for on the basis of an Employer-wide or New England States area-wide unit. Indeed, the facts support a grouping of stores within the Providence-Pawtucket-Warwick metropolitan area as an appropriate unit, and such a grouping would require the addition of only the Attleboro store to the Petitioner's proposed unit. However, in the absence of any history of collective bargaining, where no labor organization is seeking a broader appropriate unit, the Board has long held that the petitioning labor organization needs only to establish that the group of employees it has attempted to organize and seeks to represent is 'an' appropriate unit. 10/

Here, the Petitioner has restricted its interest to a Rhode Island State grouping of the Employer's drug store employees. The facts set forth above clearly demonstrate that the requested employees have substantial interests in common, notwithstanding the fact that they do not fall within a distinct administrative subdivision of the Employer's multistate operations. Although it is true that employees at stores outside the State share some of these interests, we are persuaded that the employees in the Rhode Island stores enjoy a special community of interest apart from the others by reason of the State's regulation of the retail drug industry. The Board has stated in cases arising in the insurance industry that groupings of district offices within a State may constitute appropriate geographic area units. 11/ We believe the same considerations apply to retail drug chains. The State of Rhode Island, under its police power, can and does regulate pharmacies and the sale and distribution of pharmaceutical, cosmetic, food and other products within its political boundaries. This control by the State also affects the terms and conditions of employment of all employees in the drug stores. 12/ We conclude, therefore, that all drug stores of the Employer within the boundaries of the State of Rhode Island constitute a clearly delimited geographic area appropriate for purposes of collective bargaining.

10/ See Davis Cafeteria, Inc. and Polly Davis Broward Cafeteria, Inc., 160 NLRB No. 80.

11/ See State Farm Mutual Automobile Insurance Company, 158 NLRB No. 84; Metropolitan Life Insurance Company, 156 NLRB 1408, 1417; Ibid, 43 NLRB 962, 968.

12/ Without attempting to detail the extent of this control, we note that the State of Rhode Island has on its statute books laws governing the licensing of pharmacies and of pharmacists, and laws pertaining to health and safety in the operation of pharmacies and the sale and distribution of pharmaceutical, cosmetic, food and other products dispensed by drug stores within the state. The State of Rhode Island also imposes sales and payroll taxes and has other laws setting forth minimum standards for health and safety in employment.

On June 9 and 10, 1967, the election was held, resulting in a vote of 137 for the Union and 105 against, with 26 challenged ballots. On June 16, 1967, the Respondent filed timely objections to the election alleging that the Union had falsely represented to employees that all union members were covered by a health and welfare plan which was mailed to the employees; that the employees could enjoy membership in the Union, including the health and welfare benefits and all the advantages of union membership, without cost to them until the Union obtained them a wage increase in an amount greater than union dues; and that all employees represented by the Union received 10 paid holidays a year and 6 weeks full pay for sick leave.

After an investigation, on July 18, 1967, the Acting Regional Director issued his Decision on Objections and Certification of Representatives finding that statements of the Union of which Respondent complained did not constitute an improper offer of benefits suggesting disparity of treatment based upon how employees voted, 3/ and did not involve a substantial departure from the truth such as would warrant setting aside the election. 4/

Thereafter Respondent requested the Board to review the Decision on Objections and Certification of Representative. On September 13, 1967, the Board denied Respondent's Request for Review.

#### B. The Complaint Proceeding

In its Answer, Respondent admits that the Union has requested Respondent to bargain collectively with respect to the terms and conditions of employment of the employees in the unit found appropriate by the Board since September 11, 1967, and that since September 19, 1967, Respondent has refused to do so. Therefore, unless one of Respondent's defenses attacking the validity of the certification has been sustained, it would follow that the violation alleged in the complaint has been established.

It is well settled that absent newly discovered or previously unavailable evidence, the appropriateness of a bargaining unit or of a Board certification will not be relitigated in a subsequent unfair labor practice proceeding. 5/ Application of this principle requires rejection of Respondent's efforts in this proceeding to relitigate the issues raised by its objections to the election as well as its claims that the Union's

3/ Citing Gilmore Industries, Inc., 140 NLRB 100.

4/ Citing Hollywood Ceramics Company, Inc., 140 NLRB 221.

5/ Pittsburgh Plate Glass Company v. N.L.R.B., 313 U.S. 146; S. D. Warren Company, 150 NLRB 288, enf'd. 353 F. 2d 494 (C.A. 1), cert. denied 383 U.S. 958; Banco Credito Y Ahorro Ponceno, 167 NLRB No. 52.



Request for Review of the initial dismissal of the petition was not based on any of the grounds set forth in Section 102.67(c) of the Board's Rules and Regulations and that the Board's Decision on Review was otherwise defective on its face.

There remains for consideration Respondent's contention that newly discovered or previously unavailable evidence establishes that the unit in which the election was conducted is not appropriate.

The evidence introduced by Respondent at the hearing shows that after the hearing in the representation case and while the decision was pending before the Board on review, Respondent added two additional drugstores in Rhode Island to its chain. One, located in Middletown, Rhode Island, opened in November 1966, and the other, located in Westerly, Rhode Island, opened in December 1966. These stores employed approximately 12 and 8 employees, respectively, at the time of the election. Neither is located in the Providence-Pawtucket-Warwick metropolitan area, as described in the Standard Metropolitan Statistical Areas publication cited by the Board in its decision in the representation case. The Middletown store is located in Newport County about 9 miles south and slightly west of Respondent's Tiverton store and about 8 miles south of Respondent's Bristol store. 6/ The Westerly store is located in Washington County about 15 miles west of Respondent's Wakefield store. The named stores are the closest of Respondent's stores in Rhode Island to the Middletown and Westerly stores. The employees at the Middletown and Westerly stores voted in the representation election. The Wakefield store which was in existence at the time of the election is about 12 miles south of Respondent's next nearest store at North Kingston. It employed approximately 12 employees at the time of the election. Wakefield is about 1 mile and 5 miles from the boundaries of Narragansett and North Kingston town, both of which are in the Providence-Pawtucket-Warwick metropolitan area. 1/

In opposing summary judgment Respondent contended that the Board erroneously stated and relied upon the fact that all but one store of the Employer located in the State of Rhode Island were in the Providence-Pawtucket-Warwick metropolitan area because the Board included three stores in Rhode Island outside that area while at the same time excluding the Attleboro, Massachusetts, store which is in that area.

The evidence before me does not sustain the claim of error. The Middletown and Westerly stores were not in existence at the time of the representation case hearing. Although they were in existence at the time of the Board's decision, there is no evidence that any effort was made to bring the existence of these stores to the Board's attention during the

6/ The Tiverton store was opened after the representation election and appears to be about 2 miles outside the Providence-Pawtucket-Warwick metropolitan area. The Bristol store opened shortly after the election and is in the described metropolitan area. Middleton is located on an island but is connected to the mainland near Bristol and Tiverton by bridges.

1/ These and other distances not specifically established by testimony at the hearing are based on the Rhode Island highway map received in evidence on which the testimony of Respondent's witness was also based.

period of approximately 6 months which elapsed between the opening of the second of these stores and issuance of the Board's representation decision, or indeed until after issuance of the complaint herein. 8/ Whether or not the Bureau of the Budget publication, a copy of which Respondent was unable to obtain after the Board's decision, constitutes newly discovered or previously unavailable evidence, a matter as to which I entertain substantial doubt but find it unnecessary to decide, Respondent must have been aware of the opening of its two new stores and their locations in Rhode Island at the time of the event. In these circumstances, as the Board acted on the record before it in the representation case, it cannot be deemed to have acted erroneously because of its lack of knowledge of facts that were not before it, and Respondent's attempt to upset the Board's unit determination on the basis of these additional facts may well come too late. 9/

However, assuming arguendo that the changed circumstances since the representation hearing are properly before me, I shall consider their impact on the Board's unit determination, bearing in mind that the burden is on Respondent to establish that the circumstances upon which the underlying decision was based no longer exist. 10/

Reading the Board's decision in the light of Respondent's contention in the representation proceeding, quoted in n.8 above, that a Metropolitan Providence unit might be appropriate rather than the statewide unit sought by Petitioner, I cannot construe as essential to the Board's decision its finding in the representation case that all the stores sought were in or on the border of the Providence-Pawtucket-Warwick metropolitan area. Rather it appears that these findings relate to the contention that

8/ I note in this regard that consideration of metropolitan areas was introduced into the representation case by the contention in Respondent's Memorandum Brief to the Regional Director, a copy of which was attached to its Statement in Opposition to Petitioner's Request for Review, that:

It would appear, therefore, that under the latest Board decisions, the only geographical unit based upon this record which might be appropriate and which is of a lesser scope than the three-state unit and at the same time covers some Rhode Island stores, is a Metropolitan Providence unit of the stores of the Employer. This certainly would include some, if not all, of the stores in southeastern Massachusetts, such as in Attleboro, Taunton, and Fall River, but presumably would not encompass some stores of the Employer in Rhode Island, such as those located in Wakefield, North Kingstown, and Woonsocket.

No authority was cited by Respondent in support of its contention as to the boundaries of Metropolitan Providence.

9/ See Red-More Corporation d/b/a Disco Fair, et al, 169 NLRB No. 63 S. S. Kresge Company, et al, 169 NLRB No. 61.

10/ S. S. Kresge Company et al, 169 NLRB No. 61.

a metropolitan area unit including some Rhode Island and some Massachusetts stores was the only possible appropriate unit smaller than a broad multistate unit. After defining the metropolitan area and observing that the facts would support a grouping of the stores in the metropolitan area, which would require the addition of only a single store to those sought by Petitioners, the Board rejected such a unit as the only appropriate unit on the record before it and found that a statewide unit was also an appropriate unit. In reaching this conclusion while the Board did not have its attention called to the opening of the Westerly and Middletown stores, at the same time the Board must have been aware of the mention at several places in the representation record of the opening of new stores and of the possibility that new stores in Rhode Island would not necessarily be confined to the Providence-Pawtucket-Warwick metropolitan area. What the Board found significantly distinguished all the Rhode Island employees from Respondent's other employees and gave them a special community of interest apart from employees outside the State of Rhode Island was "the State's regulation of the retail drug industry." 11/ Accordingly, I conclude that the Board found the statewide unit appropriate despite the fact that all Respondent's Rhode Island stores identified on the record before it were in the same metropolitan area rather than because of that fact.

Respondent also attacks the Board's finding as to state regulation of the retail drug industry before me on the grounds that it was based on a contention of Petitioner supported only by a meaninglessly ambiguous citation to Rhode Island statutes, the Board's decision was unsupported by any citation to Rhode Island statutes, and the Board's findings are without support. I am satisfied, however, that further consideration of this issue by me is precluded as it was previously litigated.

At the representation case hearing some evidence was elicited as to state regulation of pharmacies. At pages 6 and 7 of Petitioner's Request for Review of the Regional Director's dismissal of the representation petition, Petitioner set forth its contention that state regulation of the retail drug industry supported a finding that a statewide unit is an appropriate unit if not necessarily the only appropriate unit, citing "e.g. Chapter 19, Rhode Island General Laws, Section 5-19-2." At page 2 of its Statement in Opposition to Petitioner's Request for Review, Respondent attacked Petitioner's citation as meaningless and took issue with Petitioner's contention.

It is clear from the above that issue was joined in the representation proceeding as to the nature of state regulation of retail drugstores and its impact upon determination of the appropriateness of the unit sought by the Petitioner. 12/ Accordingly, I find that Respondent's

11/ The common interests of the Rhode Island employees otherwise, which the Board found were not shared exclusively by Rhode Island employees, have not been shown to be any different for the Westerly and Middletown employees than for those in Respondent's other Rhode Island stores.

12/ Although Petitioner's citation to Rhode Island statutes may have been less precise than possible, the reference to Section 5-19-2 would appear sufficient to have directed attention to the title and chapter to which Petitioner referred.

contentions in this proceeding relating to state regulation of the retail drug business raise nothing which was not or could not have been presented to the Board in the representation proceeding.

Accordingly, I conclude that Respondent has failed to establish any changed circumstances sufficient to warrant rejection of the Board's unit finding in the representation case. Therefore, as the Board found in the representation case, I find that the following employees of Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed at the Respondent's drugstores located in the State of Rhode Island, including post office substation employees, but excluding pharmacists, store managers and assistant managers, guards, and all other supervisors as defined in the Act.

As set forth above, the Union has been certified as representative of the employees in the above-described unit, and since September 19, 1967, Respondent has refused to bargain with the Union at its request for these employees. Accordingly, I conclude that Respondent has refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. The Remedy

Having found that the Respondent has engaged in unfair labor practices violative of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

#### Conclusions of Law

1. Respondent is an employer engaged in commerce or operations affecting commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees of Respondent employed at its drugstores located in the State of Rhode Island, including post office substation employees, but excluding pharmacists, store managers and assistant managers, guards, and all other supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.



4. At all times since July 18, 1967, the Charging Party has been, and now is, the exclusive representative of the employees in the said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on and since September 19, 1967, to bargain collectively with the Charging Party as the representative of the employees in the above unit, the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, Adams Drug Co., Inc., Pawtucket, Rhode Island, its officers, agents, successors, and assigns, shall:

#### 1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning rates of pay, hours of employment, and other terms and conditions of employment with Local 1325, Retail Clerks International Association, AFL-CIO, as the exclusive representative of the employees in the appropriate unit described in paragraph 3 of the section of the Decision entitled "Conclusions of Law."

(b) In any like or related manner interfering with the efforts of the above-named Union to bargain collectively on behalf of the employees in the appropriate unit.

#### 2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate unit, and embody in a signed agreement any understanding reached.

(b) Post at its retail drugstores in the State of Rhode Island, copies of the attached notice marked "Appendix." <sup>13/</sup> Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by the Respondent's representative, shall be posted by it immediately upon the receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

13/ In the event that this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words, "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of the United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER," shall be substituted for the words "A DECISION AND ORDER."

(c) Notify the said Regional Director, in writing within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith. 14/

Dated at Washington, D. C. MAR 4 1968

*David S. Davidson*

David S. Davidson  
Trial Examiner

14/ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

- 11 -

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

### THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

### NATIONAL LABOR RELATIONS ACT

we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with LOCAL 1325, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO as the exclusive representative of all the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with the efforts of the above-named Union to bargain collectively on behalf of the employees in the appropriate unit.

WE WILL, upon request, bargain with the above-named Union as the exclusive bargaining representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All full-time and regular part-time employees at our drugstores located in the State of Rhode Island, including post office substation employees, but excluding pharmacists, store managers and assistant managers, guards and all other supervisors as defined in the Act.

ADAMS DRUG CO., INC.  
(Employer)

Dated .....

By .....  
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 20th Floor, John F. Kennedy, Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts



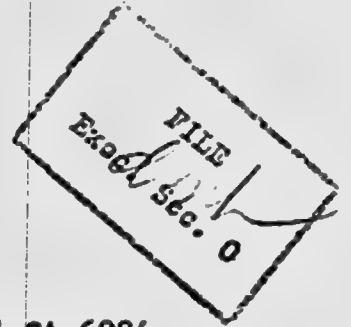
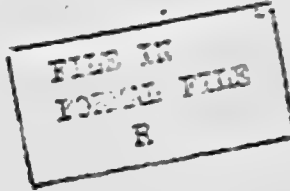
UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADAMS DRUG CO., INC.

and

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION, AFL-CIO

Case No. 1-CA-6084



## DECISION AND ORDER

On March 4, 1968, Trial Examiner David S. Davidson issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief, the Charging Party filed exceptions to which the Respondent filed a reply brief, and the General Counsel filed a brief in support of the Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations <sup>1/</sup> of the Trial Examiner.

1/ The Charging Party has filed exceptions to the Trial Examiner's failure to recommend that the Respondent be ordered to make the employees whole for losses they may have suffered as a result of the Respondent's unlawful refusal to bargain, and to his failure to order restoration of all conditions of employment unilaterally changed in any way detrimental to the employees since the Board's certification. We deem it inappropriate in this case to depart from our existing policy with respect to remedial orders in cases involving violations of Section 8(a)(5). As there is no allegation in the complaint herein and no evidence in the record that the Respondent made unilateral changes, we deny the Charging Party's request for such relief.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Adams Drug Co., Inc., Pawtucket, Rhode Island, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C. APR 26 1968

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

file

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

\*\*\*\*\*

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

ADAMS DRUG CO., INC.,

Respondent.

21938  
No. 21,938

No. 22,009

PREHEARING CONFERENCE STIPULATION

I. Statement of the Issues Presented

A. In Case No. 22,009

1. Whether the Board properly found that a bargaining unit comprising the employees in all retail drug stores owned by Adams Drug Co., Inc. in the State of Rhode Island was appropriate.

2. Whether the Board properly found that statements contained in Union pre-election leaflets distributed to Company employees did not warrant setting aside the election.

3. Whether the Company was entitled to a formal hearing on its objections to the election.

4. Whether the Board complied with its Rules and Regulations in granting, in Board Case No. 1-RC-8919, the representation proceeding, the Union's request for review of the Regional Director's dismissal of its petition.

B. In Case No. 21,938

1. Whether the Board acted properly in not requiring the Company to make the employees whole for any losses they may have suffered as a result of the Company's unlawful refusal to bargain.

2. Whether the Board acted properly in omitting to order the Company to reinstate all conditions of employment unilaterally changed in a way detrimental to the employees since the Board's certification of the Union.

II. THE JOINT APPENDIX TO THE BRIEFS

1. The portions of the record to be printed as a joint appendix shall consist of:

a. This prehearing conference stipulation and the Court's Order thereon.

b. Those portions of the record in the proceedings in Board Case Nos. 1-RC-8949 and 1-CA-6084 hereafter designated by each party.

2. The Company shall serve its designation on the Board and

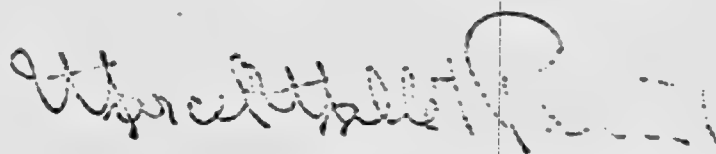
Union on or before July 8, 1968 and the Union shall serve its designation on the Board and the Company on or before July 13, 1968. -

3. The Union's designation shall include the Trial Examiner's Decision and Recommended Order and the Board's Decision and Order in Case No. 1-CA-6084, this Stipulation and the Court's Order thereon.

4. The Union shall be responsible for printing and filing the Joint Appendix. Each party shall bear the cost of printing that portion of the Joint Appendix which it designates, and shall pay the printer directly for its share of the printing cost and mailing expenses.


5. The Court and any party may refer to any portion of the transcript of the record herein which has not been printed. Any portions of the record thus referred to shall be printed in a supplemental Joint Appendix if the Court so directs.

Dated at Washington, D. C.,  
this 24th day of June, 1968.



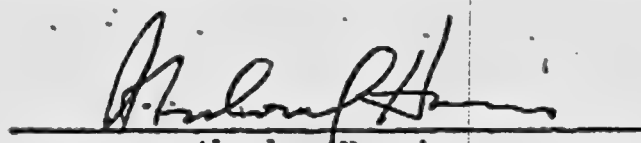
Marcel Mallet-Prevost  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,  
this 27th day of June 1968



S. G. Lippman  
Attorney for Local 1325, Retail Clerks  
International Association, AFL-CIO

Dated at Washington, D. C.,  
this 26th day of June 1968



Abraham Harris  
Sher & Harris  
Attorneys for Adams Drug Co., Inc.

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

First Region

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In the Matter of:

ADAMS DRUG CO., INC.,

Employer

and

RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

LOCAL 1325

Petitioner  
-----

: Case No.  
: 1-RC-8949

Room 701,  
24 School Street,  
Boston, Massachusetts.

Wednesday, May 11, 1966.

The above-entitled matter came on for hearing pursuant  
to notice at 10:00 o'clock a.m.

BEFORE:

ROBERT C. ROSEMERE                      Hearing Officer

APPEARANCES:

STEPHEN R. DOMESICK, Esq. Angoff, Goldman, Manning & Pyle,  
44 School Street, Boston,  
Massachusetts, appearing on  
behalf of the Petitioner.

WILLIAM J. SHEEHAN, Esq. Adler, Pollock and Sheehan,  
530 Hospital Trust Building,  
Providence, Rhode Island,  
appearing on behalf of the  
Employer.

P R O C E E D I N G S

HEARING OFFICER ROSEMERE: This is a formal hearing in the matter of Adams Drug Co., Inc., Case No. 1-RC-8949. The Hearing Officer appearing for the National Labor Relations Board is Robert C. Rosemere. All parties have been informed of the procedures of the formal hearing before the Board by service of a statement of standard procedures with the notice of hearing. Additional copies of this statement are available for distribution if more are needed.

Will Counsel please state their appearances for the record?

For the Petitioner?

MR. DOMESICK: Angoff, Goldman, Manning and Pyle, 44 School Street, Boston, Massachusetts, by Stephen R. Domesick

HEARING OFFICER: For the Employer?

MR. SHEEHAN: Adler, Pollock and Sheehan, by William J. Sheehan, 530 Hospital Trust Building, Providence, Rhode Island.

HEARING OFFICER: Are there any other appearances? let the record show no response.

Are there any other persons, parties or labor organizations in the hearing room at this time who have an interest in this proceeding? Let the record show no response.

At this time I propose to receive in evidence as Board's Exhibit No. 1, the following papers in this proceeding,



1 which I shall designate for the record as follows:

2 No. 1A: Statement of Standard Procedures in Formal  
3 Hearings Held Before the National Labor Relations Board.

4 1B: Petition for Certification of Representatives,  
5 pursuant to Section 9C of the National Labor Relations Act  
6 as amended, filed on April 25, 1966, and signed by Local 1325,  
7 Retail Clerks International Association, AFL-CIO, by  
8 Warren H. Pyle, Attorney.

9 1C: Notice of Representation Hearing in the Instant  
10 Case, signed by Albert J. Hoban, Regional Director, dated  
11 April 28th, 1966.

12 1D: Affidavit of Service of the Aforementioned papers,  
13 executed by Ann Videtta before Mary D. Ferrari, Designated  
14 Agent, dated April 28th, 1966; together with appended postal  
15 registry return receipts showing service of said papers.

16 Any objection to the receipt of Board's Exhibit No. 1?

17 (Whereupon, Board's Exhibit  
18 No. 1 was marked for  
identification.)

19 MR. DOMESICK: Petitioner has no objection.

20 MR. SHEEHAN: No objection.

21 HEARING OFFICER: There being no objection, Board's  
22 Exhibit No. 1 is received.

23 (Whereupon, Board's Exhibit  
24 No. 1 was received into  
evidence.)

25 HEARING OFFICER: Are there any motions to intervene in

1 investigation that the Employer is engaged in the operation  
2 of about six retail drugstores and a warehouse in Rhode  
3 Island?

4 MR. SHEEHAN: Six?

5 HEARING OFFICER: About six retail stores, is that correct?

6 MR. SHEEHAN: 25 in Rhode Island.

7 HEARING OFFICER: 25. And is that one warehouse in  
8 Rhode Island?

9 MR. SHEEHAN: He's got one warehouse, period.

10 HEARING OFFICER: I see. Well, is it correct, then, to  
11 say in describing the business and operations of the Employer  
12 that the Employer is engaged in the operation of about 25  
13 retail drugstores in Rhode Island, and maintains a warehouse?

14 MR. SHEEHAN: No, the Employer is engaged in the operation  
15 of about 82 retail drugstores throughout New England, New  
16 York State, Kansas, and Oklahoma, of which 25 are located in  
17 Rhode Island, and its central warehouse is located in Rhode  
18 Island, together with its central offices.

19 HEARING OFFICER: Is it true that the Employer meets  
20 the 500,000 jurisdiction on retail tests?

21 MR. SHEEHAN: Yes.

22 HEARING OFFICER: And does the Employer ship goods  
23 having an annual value exceeding \$50,000 directly from  
24 Rhode Island to points outside Rhode Island?

25 MR. SHEEHAN: Yes.

1 HEARING OFFICER: Mr. Sheehan, does the Employer  
2 decline at this time to recognize the Petitioner as  
3 exclusive collective bargaining agent for the employees in  
4 the unit petitioned for until such time as it may be  
5 certified as such in an appropriate unit determined by the  
6 Board?

7 MR. SHEEHAN: Yes.

8 HEARING OFFICER: Does either party contend that there  
9 is a contract bar to an election in this case?

10 Mr. Domesick, for the Petitioner?

11 MR. DOMESICK: No.

12 HEARING OFFICER: Mr. Sheehan, for the Employer?

13 MR. SHEEHAN: No.

14 HEARING OFFICER: The unit requested by the Petitioner  
15 is described as follows: All employees working in the  
16 Employer's Rhode Island stores (25) excluding buyers, head  
17 bookkeepers, merchandisers, store managers, guards, super-  
18 visors, and professional employees as defined in the Act.  
19 Mr. Sheehan, what is the Employer's position with respect to  
20 this unit as described?

21 MR. SHEEHAN: Inappropriate.

22 HEARING OFFICER: What is the Employer's unit position?

23 MR. SHEEHAN: It should include all the stores in Rhode  
24 Island, Massachusetts, and Connecticut.

25 HEARING OFFICER: How many stores would be involved in

1 the unit that you suggest, Mr. Sheehan?

2 MR. SHEEHAN: 45.

3 HEARING OFFICER: Of which about 25 are in Rhode Island,  
4 is that true?

5 MR. SHEEHAN: That's correct.

6 HEARING OFFICER: And how many of the 45 are in  
7 Massachusetts?

8 MR. SHEEHAN: 13.

9 HEARING OFFICER: That leaves seven in Connecticut?

10 MR. SHEEHAN: Correct.

11 HEARING OFFICER: Does the Employer expect a substantial  
12 increase or decrease in the employment roll insofar as  
13 the requested unit is concerned within the next 30 or 60  
14 days?

15 MR. SHEEHAN: No.

16 HEARING OFFICER: Is any substantial increase or  
17 decrease expected in the employment roll as far as the  
18 Employer's suggested unit is concerned?

19 MR. SHEEHAN: No.

20 HEARING OFFICER: Off the record, please.

21 (A discussion was held off the record.)

22 HEARING OFFICER: Back on the record. On the record.  
23 Mr. Sheehan, for the Employer does the Employer contest the  
24 exclusions listed by the Petitioner in this unit described  
25 in the petition, namely, buyers, head bookkeepers, merchandises  
store managers, guards, supervisors, and professional

1 HEARING OFFICER: I take it then you do not contest the  
2 inclusions?

3 MR. SKEEHAN: No.

4 Whereupon,

5 CHARLES SALMANSON

6 was called as a witness by and on behalf of the Petitioner  
7 and, having been duly sworn, was examined and testified as  
8 follows:

9 HEARING OFFICER: Be seated, please. Give your full  
10 name and address to the Reporter.

11 THE WITNESS: Charles Salmanson, S-a-l-m-a-n-s-o-n. The  
12 address?

13 HEARING OFFICER: The address.

14 THE WITNESS: Home address?

15 HEARING OFFICER: Yes.

16 THE WITNESS: 284 Slater Avenue, S-l-a-t-e-r, Avenue,  
17 Providence, Rhode Island.

18 MR. DOMESICK: May we go off the record for a moment?

19 HEARING OFFICER: Off the record a moment, please.

20 (A discussion was held off the record.)

21 HEARING OFFICER: Back on the record, please.

22 DIRECT EXAMINATION

23 Q (By Mr. Domesick) Mr. Salmanson, what's your official  
24 title with the company?

25 A Treasurer.

1 Q You hold any other offices?

2 A Well, the official office is treasurer.

3 Q You hold any other offices?

4 A No.

5 Q Have any other positions with the company?

6 A I'm also director of store operations.

7 Q What are the duties of that position, please?

8 A Complete charte of the store operations, personnel,  
9 store layouts, security, and general store operation.

10 Q Now, are you the primary company official whose duties  
11 pertain to the personnel employed in the stores by  
12 Adams Drug Co.?

13 A I'm in overall charge of this.

14 Q And are those duties confined to any group or state or  
15 group of stores, rather?

16 A Well, it's for the entire company as a whole.

17 Q There are 25 drugstores owned by Adams Drug Co. in  
18 Rhode Island?

19 A Yes.

20 Q And are each of those 25 separately incorporated?

21 A No, they're not.

22 Q How many of those 25 are separately incorporated?

23 A I don't have the details, but we do have a record, I  
24 believe.

25 Q Are your notes which would permit you to answer that

1 England, Incorporated.

2 Q No, I asked for the total number of stores in Rhode  
3 Island which are separate corporations. Can you give me  
4 the number? I'm not interested in the name.

5 A One single individual store corporation?

6 Q Total number. Total number. Count them all to yourself  
7 and just give me the number, please, only confined to the  
8 State of Rhode Island.

9 Mr. SHEEHAN: I don't think he knows what you're driving  
10 at.

11 HEARING OFFICER: Gentlemen, off the record.

12 (A discussion was held off the record.)

13 HEARING OFFICER: Back on the record.

14 Q Mr. Salmanson, again would you give me the total number of  
15 separate Rhode Island corporations?

16 A 19 corporations.

17 Q And that total includes the mother corporation, Adams  
18 Drug Co., Inc.?

19 A Yes, it does.

20 Q And therefore, six drugstores located in the State of  
21 Rhode Island which are operated by at least one of those  
22 corporations?

23 A That's right.

24 Q Now, with respect to the stores in Rhode Island, is  
25 there one common payroll week?



- 1 A I'm sorry.
- 2 Q Is there oen common payroll week?
- 3 A Week?
- 4 Q Week. You understand my question?
- 5 A No, I don't.
- 6 Q Do your Rhode Island stores have a payroll week, a
- 7 period in which the pay is deteimined?
- 8 A Well, all our stores operate on Sunday through
- 9 Saturday basis as a week.
- 10 Q Sunday through Saturday?
- 11 A That would be all 83 stores.
- 12 Q Now, if you would confine your answers to my questions,
- 13 please, your stores in Rhode Island have a common payroll
- 14 payday?
- 15 A No, they don't. It may span over two days.
- 16 Q Payrolls are prepared in the offices of the parent
- 17 corporation in Rhode Island?
- 18 A Yes, it is.
- 19 Q And payroll checks are mailed out to employees?
- 20 A They're mailed out to employees, some are mailed to
- 21 homes, some are mailed directly to the store.
- 22 Q Checks to male employees are mailed to their homes, is
- 23 that correct?
- 24 A In most instances.
- 25 Q Except for stockmen?

1 Q And one man is assigned to work on those fountains?

2 A There aren't any fountain managers as I know as of today.

3 Q Male managers?

4 A Male managers, unless somebody was hired in the last  
5 week or two.

6 Q And you have a classification of stockmen in your  
7 Rhode Island stores?

8 A That's right.

9 Q And do you know the number of stockmen you have?

10 A Well, we usually have one for every store. There may be  
11 one or two missing at certain times.

12 Q So approximately 22 to 25?

13 A Approximately.

14 Q And you also employ pharmacists in each of your stores?

15 A That's true.

16 Q Now, excluding those personnel, do you have any other  
17 male employees working in the stores?

18 A <sup>may</sup> We have a few clerks here and there.

19 Q Have any estimate of their number?

20 A There would probably be under a half a dozen.

21 Q And do you have an estimate of the number of the clerks  
22 employed in all of your stores in Rhode Island?

23 A I believe that we have about 280 or so.

24 Q And these are females with the exclusion of that half a  
25 dozen male employees?

A I haven't got the breakdown exactly.

Q Well, it follows from what you've said, of course, you have six male employees who are not in the three included classifications that we previously discussed?

A I said it's probably under six, other than stockmen.

Q We excluded those.

A I haven't excluded anybody. I think we have somewhere's around 280. I haven't got any exclusions.

MR. SHEEHAN: That includes the stockmen?

THE WITNESS: Yes.

Q It's correct that no store in states contiguous to the State of Rhode Island have the same business hours as the Rhode Island stores?

A HEARING OFFICER: What's that question again, Mr. Domesick?

Q Isn't it correct, Mr. Salmanson, that no stores in states contiguous to Rhode Island have the same business hours as the Rhode Island stores?

A That is not true. They do have in general same hours in all our stores.

Q Are you the same Charles Salmanson who testified before the National Labor Relations Board in a case No. 1-RC-8507, which dealt with a petition by this Petitioner for pharmacists employed in your Rhode Island stores?

A True.

Q By the way, Mr. Salmanson, are there for the 19 corpora-0

tions in the State of Rhode Island, do they have the same officers for each of the corporations?

A Yes, they do.

Q Mr. Salmanson, your stores in Rhode Island operated on various schedules?

A That's true.

Q Per week. Now, would you describe--Do you have stores which are termed short hour stores?

A We do.

Q and how many stores in Rhode Island are short hour stores?

A Let's see. We have--I believe it's three stores. Three.

Q And what are their regular store hours each week?

A They are primarily 9:00 to 6:00, and maybe open two evenings a week, closed Sundays and holidays.

Q And these are stores that are located in the downtown areas?

A Primarily.

Q Well, of the three are all----

A Those three are in downtown.

Q Now, do you have stores which have different hours than that?

A We have the stores that have the suburban-type store hours, 8:00 a.m. to 10:00 p.m., and 9:00 to 9:00 on Sundays.

Q And how many sotres in Rhode Island have those hours?

1 A I'm sorry, there was one more short-hour store, that  
2 store in Woonsocket.

3 Q It would make a total of four?

4 A Four, yes.

5 Q Now, with respect, again, to these so-called suburban  
6 stores, how many do you have in the State of Rhode Island?

7 A There would be 21, assuming that we have the four is a  
8 correct count.

9 Q That takes care of the 25 stores?

10 A Right.

11 Q Now, with respect to these stores which are open from  
12 8:00 to 10:00 weekdays and Saturdays/and from 9:00 to 9:00 on  
13 Sundays, could you tell me whether the majority of stores in  
14 any other state follow the same schedule?

15 A Practically all our stores in, every store in Oklahoma  
16 except the day store has the exact same hours we have in  
17 Rhode Island.

18 Q When you say day store, that means a short hour store?

19 A Short hour store. The same applies to Kansas. The same  
20 applies to Massachusetts, and with slight variations, sometimes  
21 they close a half hour earlier, and in New York the only  
22 variation I think is Sunday night where they may close  
23 earlier.

24 Q Now, in Massachusetts do you have any short hour stores?

25 A We do.

1 Q And what are their hours?

2 A We have one in Attleboro that's the same as Rhode  
3 Island.

4 Q What are their hours?

5 A The same day hours as others, that one 9:00 to 6:00 and  
6 9:00 to 9:00 to days a week. That's Attleboro, Massachusetts.

7 Q That's the only one out of the 13 sotres in Massachusetts?

8 A We have the same in Haverhill, Massachusetts.

9 Q A day store?

10 A Day store. We have--I think those are the only day  
11 stores.

12 Q Now, with respect to the stores in Massachusetts which  
13 are not short hour stores, what are their schedules?

14 A Somerset, Mass., would be----

15 Q Let me ask it this way. Do you have one set schedule  
16 in Massachusetts as you do in Rhode Island for long hour  
17 stores?

18 A The schedule is the same unless we have a peculiar situa-  
19 tion. They're all based the same. There are exceptions  
20 because of the individual store situations.

21 Q Now, are the store hours for the Massachusetts stores  
22 which are operated on a long hour basis, have these been  
23 changed since August 10th, 1965?

24 A I--I'm not sure if they have or not at this moment.

25 Q I show you the transcript for hearing, Case 1-RC-8507,

1 Q Mr. Salmanson, is every one of your 13 stores in  
2 Massachusetts a pharmacy?

3 A No.

4 Q How many are not pharmacies?

5 A Three. Yes, three, that's right.

6 Q Now, out of your seven stores in Connecticut, are there  
7 any which are not pharmacies?

8 A They're all pharmacies.

9 Q With respect to the stores in Connecticut, do you have  
10 any short hour stores?

11 A No, we do not.

12 Q And the stores for those seven stores, what are their  
13 hours?

14 A Their hours, I believe, are open a little earlier  
15 because they have soda fountains, restaurant departments,  
16 they probably open at 7:00 instead of 8:00 o'clock. 7:00  
17 o'clock.

18 Q And when do they close?

19 A Some close at 10:00, some may close at 11:00. A few may  
20 close at 11:00.

21 Q Each of your seven Connecticut stores has a luncheonette?

22 A No, we have one store we just opened up a couple of  
23 weeks ago, that store is not a drugstore, I want ot make a  
24 correction. I just realized we just opened a store in  
25 April, and this store is not a pharmacy, and it does not have



1 MR.SHEEHAN: Well, what's the question?

2 MR.DOMESICK: I think Mr. Salmanson understands it.

3 HEARING OFFICER: Well, does Mr. Salmanson understand  
4 that there is question before him? Do you?

5 THE WITNESS: I believe I understand whether every help  
6 receives the same pay or----

7 MR. SHEEHAN: I'm going to object now.

8 MR. DOMESICK: I'll withdraw it.

9 Q Mr. Salmanson, when an employee, a clerk is hired in  
10 the Rhode Island stores, is he paid the same rate as any  
11 other new starting clerk?

12 A Not necessarily, no.

13 Q So that there is no pre-determined wage policy for the  
14 clerks you hire in your Rhode Island stores?

15 A There is a guide that we may have based on minimum  
16 state wages with exception for individual stores, individual  
17 experience and location and so forth. I mean there is not a  
18 definite pattern.

19 Q By the way, who would determine what a newly-hired  
20 clerk would be paid?

21 A It may be the store manager, or the supervisor, but the  
22 ultimate approval comes through our office.

23 Q And similarly with an employee already employed who  
24 wishes a raise, who makes that determination?

25 A The determination is made by me, but the suggestion may

1 be made by, the recommendation may be made by somebody else.

2 Q Who would that someone else be, the store manager?

3 A Could be the store manager or the supervisor.

4 Q Does the company maintain for its Rhode Island  
5 employees any policy with respect to life insurance?

6 A Are you referring to clerks?

7 Q Clerks.

8 A They do not.

9 Q Or with health and accident insurance?

10 A Yes, health and accident. Well, we have Blue Cross and  
11 physician service.

12 Q Who--Which of your clerks, or the requirements, rather,  
13 for your clerks to obtain Blue Cross and physician service?

14 A All our clerks in Rhode Island, Massachusetts, and  
15 Connecticut have Blue Cross and physician service fully paid  
16 if they work over so many hours a week.

17 Q Would that be 38 hours a week?

18 A I believe that's the figure.

19 Q And in the State of Rhode Island, how many of your  
20 clerks work 38 or more hours each week?

21 A I--I do not have the record here in front of me, but  
22 Mr. Sheehan may have it. I don't know if he has it.

23 MR. SHEEHAN: No, I don't have it.

24 HEARING OFFICER: You want to go off the record?

25 MR. DOMESICK: He says he doesn't have it.

1 Q That's what's listed on Petitioner's1?

2 A That's right.

3 Q Now, it's correct that newspaper advertisements are  
4 common for all stores in Rhode Island?

5 A The newspaper advertisements are all common for 81 or  
6 the 83 stores.

7 MR.DOMESICK: I move that that answer be stricken as  
8 not responsive.

9 MR. SHEEHAN: I think the answer is responsive.  
10 Mr. Domesick keeps trying to confine answers to questions  
11 in Rhode Island, but the answers pertaining to the operations,  
12 I think the witness is entitled to answer it that way.

13 HEARING OFFICER: It is true the witness didn't respond  
14 precisely to the question propounded, but I'm sure that the  
15 record is interested in the answer that he gave, so I'll  
16 let it stand and deny the motion to strike.

17 Q Now, Mr. Salmanson, the Rhode Island stores are not  
18 advertised in any out-of-state newspapers, is that correct?

19 A that is not correct.

20 Q Is that correct in August of 1965?

21 A I don't know about August, 1965, but I know what's going  
22 on right now. I would have to check records to know about  
23 last August.

24 Q In what papers are--In what out-of-state Rhode Island,  
25 out-of-state papers are Rhode Island stores advertised in?

1 A As I mentioned because the state does not require that  
2 to be done.

3 Q Now, each advertisement which appears in a Rhode Island  
4 newspaper carries the name and number and the pharmacist's  
5 name of each of your Rhode Island stores, is that correct?

6 A Again, it's compulsory by law.

7 Q Is it compulsory by law that you advertise all 25  
8 stores in one ad?

9 A We don't advertise 25 stores in one ad; we advertise  
10 about 30 stores which includes Massachusetts and Rhode Island.

11 Q And do you give them all equal space in the ad where the  
12 names of the store are listed?

13 MR.SHEEHAN: Objection. What's the relevancy?

14 HEARING OFFICER: Well, I'm not sure. I'll let the  
15 question stand.

16 MR. DOMESICK: All right. I'd just at this time like  
17 to request that the Hearing Officer and in turn the  
18 Regional Director take notice of Employer's Exhibits 15A, C----

19 HEARING OFFICER: Hold on, please. Those Exhibit numbers  
20 again, please?

21 MR. DOMESICK: Employer's Exhibit Nos. 15A----

22 HEARING OFFICER: Yes.

23 MR. DOMESICK: C----

24 HEARING OFFICER: Yes.

25 MR. DOMESICK: F through L----

HEARING OFFICER: Yes.

MR. DOMESICK: And N through P.

1 MR. SHEEHAN: Let's go look at them.

2 HEARING OFFICER: If you want to go down to the fourth  
3 floor----

4 MR. DOMESICK: I suggest, I'm through with that area  
5 of the questioning, and perhaps at the recess we could more  
6 expeditiously take them.

7 HEARING OFFICER: Do you have any question you want to  
8 pursue at this time? Go ahead.

9 Q Prescription labels bearing the name Adams Drug Co.  
10 are printed for the Rhode Island stores, is that correct?

11 A I didn't understand the question.

12 MR. DOMESICK: Meredith, may I have it read back?

13 (The pending question was read back by the Reporter.)

14 THE WITNESS: Well, the question is very incomplete.  
15 I mean we print labels for every one of our drugstores. I  
16 mean I don't quite understand this particular portion of  
17 the question.

18 Q Mr. Salmanson, when you print them for your other  
19 drugstores do they have the name Adams Drug Co.?

20 A We have Adams Drug Co. stores in other states.

21 Q Excluding Rhode Island stores, how many of your 80-odd  
22 stores bear the name Adams Drug Co. as a trade name?

23 MR. SHEEHAN: Take a look at Exhibit 1.

24 THE WITNESS: Well, we have store 6 in Attleboro, Mass.  
25 We have store 17 in Pleasant Street, Fall River. Store 9,

1 Main Street, Fall River. We have Cambridge, Massachusetts,  
2 Store 31. We have Somerset, Massachusetts, and I believe  
3 that covers it.

4 Q And of those seven stores, Mr. Salmanson, how many of  
5 them arenon-pharmacist?

6 A Those particular stores I think they're all pharmacies.  
7 There's 6, 9, 17, they're all pharmacies.

8 Q The store in Cambridge is a pharmacy?

9 A Yes, it is.

10 Q Now, excluding those stores, are there any other stores  
11 for which you print labels with the name of Adams Drug Co.  
12 on them?

13 A No.

14 Q Now, on the Rhode Island stores on the prescription  
15 lables you also have imprinted the name of the individual  
16 pharmacist who has registered the store, is that correct?

17 A I believe the same applies for all the Adams labels,  
18 whether it's Rhode Island or Massachusetts.

19 Q So that your prescription labels for the Adams stores in  
20 Massachusetts would have the pharmacist's name on them?

21 A Yes, they would.

22 Q Who hires the clerks for each one of your stores in  
23 Rhode Island?

24 A The clerks in all our 83 stores are hired by the managers,  
25 in most instances.

1 Q The vast majority of instances?

2 A That's right.

3 Q Now, in your western area stores, most of the hiring of  
4 clerks is done by area supervisors, however?

5 A The store managers hire all clerks in practically every  
6 instance in every one of our stores.

7 Q They're the people that make the determination whether  
8 to hire an additional employee?

9 A As a rule they do.

10 Q Now what is the procedure for hiring a clerk in one of  
11 your Rhode Island stores?

12 A If I understand the question, normally the manager  
13 interviews the clerk and has them fill out a form, a feference  
14 form which we use in all our stores, and he, if he feels that  
15 the clerk is suitable, he will hire her. In some instances he  
16 may call the supervisor for his opinion, but that, of course,  
17 is not a rule.

18 Q Only interview--Is that the only interview which the  
19 prospective clerk must go through, that which he goes through  
20 with the store manager?

21 A Yes.

22 Q And who makes the final decision whether to hire that  
23 particular employee or not?

24 A As I mentioned before, the manager in most instances  
25 interviews and hires clerks, which he knows from his



1 Q Two? Are those short hour or long hour stores?

2 A These are long hour stores.

3 Q In the State of Connecticut you have seven stores all  
4 of which are pharmacies?

5 A We have six pharmacies, and one non-pharmacy.

6 Q And with respect to the six pharmacies in Connecticut,  
7 how many of them are managed by non-pharmacists?

8 A They're all pharmacy managed.

9 Q Now, with respect to the clerks in your Rhode Island  
10 stores, do you have any vacation policy?

11 A Yes, we do.

12 Q And what is that policy?

13 A The policy is one to five years, one week; five years or  
14 over, two weeks' vacation.

15 Q And in addition to the stores in Rhode Island, does  
16 that same policy apply to any other stores, any other states,  
17 first?

18 A Yes, it applies to all stores that we opened with the  
19 exception of those stores that we acquired through acquisition  
20 where we therefore maintained the schedule that was  
21 inaugurated by the previous owner.

22 Q With respect to your 13 stores in Massachusetts, to  
23 how many of those 13 does this policy apply?

24 A It would apply to--It would apply to all but I believe  
25 three stores.

1 Q And in Connecticut, to how many stores would that  
2 policy apply?

3 A In Connecticut I believe it's--It's an indefinite thing  
4 yet, because we have--we have just about reached our first year  
5 vacation, and we haven't quite decided just how to handle it.

6 Q Now, this vacation policy, as it applies, is for the  
7 benefit of full time clerks only?

8 A Our vacation applies to full time employees, yes.

9 Q Now, is it correct that sales records for your stores  
10 are kept on a state-by-state basis?

11 A No, that is not true.

12 Q Was that true in August of 1965?

13 A No, it was not true then.

14 Q August 10th, 1965, Mr. Salmanson, you were asked by  
15 the Hearing Officer on Page 246 of the transcript, "Do you  
16 keep any records in the normal course of your business,  
17 whether you consider them a primary importance or incidental  
18 importance which show any figures or any information concern-  
19 ing stores on a state-by-state basis only?" Answer, "Not on  
20 a permanent basis." Question, "Do you do it temporarily, what  
21 kind of record do you keep on a temporary basis which relate  
22 to state-by-state?" Answer, "Sales." Is that answer  
23 correct today?

24 A No, the question you just asked me is if all our stores  
25 are kept by states, sales, and I said no, it isn't. Some

1 portion of an information. We do have certain states that  
2 we keep separately, such as I said before, the State of  
3 Oklahoma, the State of Kansas, part of the State of New  
4 York, would be as alone, part of it would be with  
5 Massachusetts and Rhode Island, and Connecticut, up till  
6 recently, was just a new purchased company that we also keep  
7 as a separate group. We all--I'm sorry. We also have part  
8 of Connecticut with Massachusetts now, and Massachusetts  
9 itself is part of, is mixed with Rhode Island and includes  
10 some of New York, I mean, but again that's merely additional  
11 information to our separate store information.

12 Q Fine. Mr. Salmanson, you've mentioned the word super-  
13 visors. Are these area supervisors?

14 A Yes.

15 Q That's their official title?

16 A We call them supervisors, but you can refer to them,  
17 I suppose, as area supervisors if you wish.

18 Q Now, the 25 Rhode Island stores are covered by how many  
19 area supervisors?

20 A There are three supervisors that are, have some Rhode  
21 Island and Massachusetts stores. Each of the three super-  
22 visors--All of the three supervisors have Rhode Island and  
23 Massachusetts stores, all three of them.

24 Q How many area supervisors does the company employ  
25 throughout the system?

1 A There may be state labor lawas that have some bearing  
2 on working conditions, sanitary laws, and so forth, I don't  
3 know.

4 Q Are your clerks required to obtain such a thing as  
5 a food handler's permit?

6 A I believe that's only necessary where they have  
7 restaurants, although I'm not positive. I don't think so.  
8 My knowledge, there's none.

9 Q Now, in the State of Massachusetts and in Connecticut  
10 and in Rhode Island with respect to the drugstores you operate  
11 in those three states, have you had any history of collective  
12 bargaining?

13 MR. SHEEHAN: I think we've already----

14 MR. DOMESICK: No, we said----

15 MR. SHEEHAN: We'll stipulate that there is no history  
16 of collective bargaining in any of the stores of the company  
17 wherever they may be located.

18 MR. DOMESICK: Just let me ask one more question.

19 Q Mr. Salmanson, do you, do unions represent employees in  
20 any of your stores throughout the country?

21 A No, none to my knowledge.

22 Q Do you do business with any union which represents  
23 employees employed by your company throughout the country?

24 A I--We already stipulated there's no history of collec-  
25 tive bargaining in the company's history.

1 stock in that warehouse or for which the warehouse's stock  
2 is expended, you use wholesale jobbers?

3 A That's true.

4 Q And do you use two wholesale jobbers in the State of  
5 Rhode Island?

6 A We use two jobbers, you referring now to drugs, I'm  
7 assuming?

8 Q Yes, the drug aspect of the business.

9 A The drugs, we have two, we have two wholesale drug  
10 houses.

11 Q And I believe it was established in the last hearing,  
12 and I'll pose it in the form of a question, is it the company  
13 policy to favor one of those jobbers over another?

14 A Yes, sir, it is.

15 Q And those two jobbers are used for each of the 25  
16 drugstores in Rhode Island, or may be used?

17 A Well, actually they're used for about 35 drugstores.  
18 They're used for Rhode Island, Massachusetts, and I don't  
19 think they cover, and they cover Connecticut too.

20 Q One of those jobbers is McKesson and Robbins?

21 A Right.

22 Q And that's the jobber that covers perhaps more than your  
23 state?

24 A No, I would say Providence Wholesale Drugs covers  
25 Rhode Island and Massachusetts.

1 MR. SHEEHAN: I'm going to---This is a statement.

2 Q I ask you----

3 HEARING OFFICER: Well, is it not----

4 MR. DOMESICK: I'm not interseted in that at the moment.

5 THE WITNESS: That is not so.

6 Q That is not so? I ask you if it's not a fact that the  
7 pay for clerks in you Rhode Island stores determined in part  
8 by the fact that they are employed in Rhode Island?

9 A Well, as I mentioned, some states have minimum wage  
10 laws that vary, which would have some bearing on certain clerks  
11 only, probably new hires.

12 Q So to that extent the state in which they are employed  
13 would be relevant to what they were paid, at least as new  
14 hires?

15 A Well, only up to a point, depending on the clerk.

16 Q Now, in the State of Rhode Island the company furnishes  
17 its pharmacies with price lists for prescriptions, is that  
18 correct?

19 A I'm just trying to refresh my memory. I think this price  
20 list is throughout all states except the west.

21 Q That would include what states, I mean, are you----

22 A I think it includes all our stores except the west, that  
23 is Kansas and Oklahoma.

24 Q Now, the price list--So the answer to my question is yes,  
25 there is such a thing as a price list for prescription

1 work as such a drug store would have.

2 Q Does he have the power to hire and fire?

3 A No, he doesn't.

4 Q The power to recommend wage increases?

5 A A stockman is a clerk. He has no----

6 Q No supervisory capacity?

7 A Not as such, no. That is if you're referring to a  
8 stock clerk, he wouldn't have any, that's right.

9 Q So a stockman is also at least in our terms a stock  
10 clerk?

11 A Yes, you can use that terminology.

12 Q Now, in the short hour stores you also have other sales  
13 personnel?

14 A Yes.

15 Q And these are termed clerks?

16 A Clerks or sales girls, or whatever terminology you  
17 want.

18 Q And in each of these short hour stores do you have any  
19 men who are clerks?

20 A We have stockmen as mentioned before in the short hour  
21 stores.

22 Q With the exclusion of the stockmen, all your clerks  
23 would be femals?

24 MR. SHEEHAN: You're referring to the short hour stores?

25 Q Short hour stores.



1 A I'm quite sure that would be the case.

2 Q ASre any of those clerks given any other--Do any of  
3 those clekrs, the female clerks, have authority to hire and  
4 fire?

5 A Female clerks, no. We have a female manager, but it  
6 would not be a clerk.

7 Q And are there sub-categories or different categories  
8 of clerks that are maintained in the short hour stores?

9 A You referring to different responsibilities?

10 Q Well, do they bear any other title?

11 A We have some girls that are so-called cosmeticians  
12 who are considered more loyal. Not loyal, but more  
13 responsible.

14 Q More knowledge?

15 A More responsible type people.

16 Q These would be people who deal in the cosmetics sections  
17 of your stores?

18 A They would be in charge of the cosmetic department, but  
19 not necessarily limit their duties to that department.

20 Q But they would be more knowledgable about the area of  
21 cosmetics?

22 A That is true.

23 Q Do you give them any special training in this area?

24 A No, they may attend a manufacturer's show or exhibition  
25 once in a while.

1 clerk designated as cosmetician?

2 A Not necessarily in each store.

3 Q Does the company maintain a set of written rules and  
4 regulations for its rank and file employees?

5 A We have a little rule pamphlet that we usually give out  
6 to new employees about cash register rules and regulations,  
7 and so forth and so on.

8 Q And is the distribution of that set of regulations con-  
9 fined to any particular state?

10 A No, it's for all stores.

11 Q All stores in your chain?

12 A Yes.

13 Q Now, your stores in Rhode Island are equipped with  
14 timeclocks, are they not, for rank and file employees?

15 A Yes.

16 Q And each clerk is, part time and full time, is required  
17 to punch in and out?

18 A True.

19 Q And these records form the basis for their weekly pay?

20 A True.

21 Q And they--These clerks are paid on an hourly basis?

22 A Yes.

23 Q The pharmacists are paid by salary, weekly salary?

24 A Yes.

25 Q Are fountain managers paid by, on an hourly basis?

1 A I don't know. I'm not sure.

2 Q Are cosmeticians paid on an hourly basis?

3 A Yes.

4 Q Do you have a classification of buyers in your Rhode  
5 Island stores? Do you have employees that are designated  
6 as buyers?

7 A In the stores, no.

8 Q Or merchandisers?

9 A No.

10 Q Do you have people who are termed guards in your stores?

11 A No.

12 Q Or who function as guards?

13 A No.

14 MR. DOMESICK: May I have a request to recess for about  
15 five minutes?

16 HEARING OFFICER: Certainly. Off the record.

17 (Recess held.)

18 HEARING OFFICER: We'll go on the record.

19 MR. SHEEHAN: Pharmacists employed by the company are  
20 supervisors and professional employees as defined in the  
21 Act. Store managers who are not pharmacists are supervisors  
22 as defined in the Act.

23 HEARING OFFICER: Store managers who are not pharmacists  
24 are supervisors, right?

25 MR. SHEEHAN: Right. All right. The Union states it

1 wants to confine the stipulation to the Rhode Island  
2 stores.

3 HEARING OFFICER: All right.

4 MR. SHEEHAN: We have--We would concede that the stipula-  
5 tion should be confined to the Rhode Island stores without  
6 prejudicing our position that the same would apply, and from  
7 the Company's standpoint, what's contained in the stipulation  
8 in fact applies in the other areas, but the Union is not  
9 stipulating to the other areas.

10 HEARING OFFICER: All right.

11 MR. SHEEHAN: Now, may we go off the record a moment?

12 HEARING OFFICER: One second. You so stipulate with  
13 respect to the Rhode Island pharmacists and the Rhode Island  
14 store managers?

15 MR. DOMESICK: I do.

16 HEARING OFFICER: And Mr. Sheehan, you do?

17 MR. SHEEHAN: I do.

18 HEARING OFFICER: The stipulation is received. Are  
19 we off the record now?

20 MR. SHEEHAN: Yes.

21 HEARING OFFICER: You want this off the record?

22 MR. SHEEHAN: Yes.

23 (A discussion was held off the record.)

24 HEARING OFFICER: Back on the record.

25 MR. SHEEHAN: The Union and the Employer have also agreed

on a stipulation for the record, Mr. Rosemere, that pharmacists, wherever employed by the Employer, are professional employees as defined in the Act.

HEARING OFFICER: Do you so stipulate, Mr. Domesick?

MR. DOMESICK: I so stipulate.

HEARING OFFICER: Mr. Sheehan, you so stipulate?

MR. SHEEHAN: I do.

HEARING OFFICER: The stipulation is received.

MR. DOMESICK: May we go off the record again?

HEARING OFFICER: Off the record.

(A discussion was held off the record.)

HEARING OFFICER: Back on the record.

MR. SHEEHAN: The Company and the Union have agreed to stipulate that the Company employs no classifications of employees in any of its stores called buyer or merchandiser.

HEARING OFFICER: Mr. Domesick, you so stipulate?

MR. DOMESICK: I so stipulate.

HEARING OFFICER: Mr. Sheehan, you so stipulate?

MR. SHEEHAN: Yes.

HEARING OFFICER: The stipulation is received.

Off the record now.

(A discussion was held off the record.)

HEARING OFFICER: On the record.

MR. DOMESICK: The Union and the Company have agreed to stipulate that employees classified as cosmeticians are



1 orders merchandise from either your warehouse or from the  
2 wholesale jobbers?

3 A The merchandise that's ordered from the warehouse from  
4 all our stores are ordered by every, by all clerks in the  
5 store.

6 Q All right. And in that performing that function they  
7 fill out what goods they think they need to order, books?

8 A Yes, we have a standard order form for all our stores, and  
9 they all fill in a portion of that order form.

10 Q Any employee, if he sees an item is missing, he could  
11 check it in?

12 A Usually different clerks order different departments.

13 HEARING OFFICER: Excuse me. Is this from the company's  
14 warehouse?

15 THE WITNESS: Yes, for all our stores.

16 Q And those order forms are turned over to the store  
17 manager for submission to the company?

18 A Yes.

19 Q And with respect to ordering from jobbers, it's the  
20 store manager's responsibility to do that?

21 A That could be the store manager and pharmacist in general.

22 Q Now, your stores in Rhode Island are scattered throughout  
23 the state?

24 MR. SHEEHAN: Well, we have an exhibit in there which  
25 lists them by street address, city, and so forth, so----

1 HEARING OFFICER: Is that Petitioner's Exhibit 1?

2 THE WITNESS: Yes.

3 HEARING OFFICER: All right. The record will so show  
4 that Petitioner's Exhibit No. 1 will reflect the geographic  
5 locations of the several stores in Rhode Island.

6 MR. SHEEHAN: Right.

7 Q Now, it's my understanding that the store manager of  
8 each individual store is the person generally responsible for  
9 the running and the conduct of the business at that store,  
10 is that correct?

11 A That's correct.

12 Q And each store has a separate profit and loss statement  
13 and a separate balance sheet?

14 A Correct.

15 Q Does the parent corporation, Adams Drug Company, own  
16 stores outside of Rhode Island?

17 A I would have to refer to that list again.

18 MR. SHEEHAN: Let's go off the record.

19 HEARING OFFICER: Off the record, please.

20 (A discussion was held off the record.)

21 HEARING OFFICER: On the record, please.

22 MR. DOMESICK: The Union and the Employer have agreed  
23 to the following stipulation: That every store located  
24 outside of the State of Rhode Island, together with a total  
25 of 19 stores located in the State of Rhode Island, are

1 corporations different from the parent corporation, Adams  
2 Drug Co., Inc.

3 HEARING OFFICER: Do you so stipulate, Mr. Sheehan?

4 MR. SHEEHAN: Yes.

5 HEARING OFFICER: Do you so stipulate, Mr. Domesick?

6 MR. DOMESICK: Yes.

7 HEARING OFFICER: The stipulation is received.

8 Q Mr. Salmanson, when clerks are hired, we understand  
9 now they're hired in almost all cases by the store manager,  
10 they're hired for that partiucular store?

11 A That's right.

12 Q And again in vast majority of cases is it true that  
13 that is the only store in which those employees would work as  
14 clerks?

15 A That's correct.

16 Q Now, the company holds no parties for all its employees  
17 in a particular state, is that correct, social activities?

18 A No, usually in recent years each store runs their own  
19 Christmas party. Sometimes two stores may get together and,  
20 in a group or in a party.

21 Q And the company has- created no organization which  
22 includes clerks employed by stores in Rhode Island,  
23 Massachusetts, and Connecticut?

24 A That's right.

25 Q Now, for newspaper ads in the State of Rhode Island,

1 the company advertises in what newspapers?

2 A Pawtucket Times, Woonsocket Call, Journal Bulletin,  
3 Providence.

4 Q Providence, and do those ads appear on the same day of  
5 the week each and every week?

6 A Yes.

7 Q And those ads are generally full-page newspaper ads?

8 A No, they're not. Are you referring now to each one  
9 separately, is that right?

10 Q Let me withdraw that question and ask you this, Mr.  
11 Salmanson: When an ad appears in the Providence Journal  
12 Bulletin, that is generally a full-page ad?

13 A Yes.

14 Q And it lists merchandise which is sold in all the stores  
15 in Rhode Island?

16 A Actually it lists all the items that are sold in 83  
17 stores, 81 stores, I should say.

18 Q And the prices charged you list prices in those  
19 newspaper advertisements, prices for the items that are  
20 advertised?

21 A Yes.

22 Q And those prices are common to all the stores in Rhode  
23 Island?

24 A Actually the ad is for the entire chain with some  
25 variations.

1 Q Mr. Salmanson, I'm going to have to ask you to confine  
2 your answers to my question.

3 A All right.

4 Q The question was do you have items advertised and you  
5 list their prices for ads appearing in the Providence Journal  
6 Bulletin, are those prices the same for all your stores in  
7 Rhode Island?

8 A Well, the addresses in that ad include Massachusetts, so  
9 I've got to answer it that it includes all the stores in that  
10 ad, which would be all Rhode Island and some Massachusetts  
11 stores.

12 Q Now, you don't list all your Massachusetts stores in  
13 ads which appear in the Providence Journal Bulletin?

14 A Correct.

15 Q so the prices charged for the same item in one store  
16 in Rhode Island will be the same prices charged for another,  
17 for the same item in another store in Rhode Island, that much  
18 is correct?

19 A In the newspaper ad, yes.

20 Q Have clerks in your Rhode Island stores ever requested  
21 transfers to other stores in the State of Rhode Island?

22 A they have on rare occasions, yes.

23 Q Perhaps when they were moving to a different city?

24 A Possibly, yes.

25 Q What--Was it to----

A It also happens interstate too. We had one man move to Texas, and we gave him a job in Oklahoma, so I mean----

Q It sounds like quite a long way to commute.

MR. SHEEHAN: I guess we better expand the unit.

Q Again confining your answer to the stores located in Rhode Island, there is common pricing for prescription drugs, that's correct, isn't it?

A that is not correct. We have certain Rhode Island stores that are pricing their prescription as an exception to the chart in certain areas.

Q And that would be because----

HEARING OFFICER: As an exception to what?

THE WITNESS: To our----

Q Your chart?

A Chart, our price chart.

Q And that would be where the store possibly was a newly opened one?

A It might be newly opened, or it might be neighborhood competition.

Q Those would be special circumstances?

A True.

Q But as a general rule, then, you have a common drug and prescription pricing policy?

A true.

MR. DOMESCIK: May we go off the record for a moment?



1 A As a regular duty, that is right.

2 Q And do you have other subpost offices in your stores  
3 in Rhode Island?

4 A We have to others where they do sales and collections.

5 Q Now, in the State of Massachusetts, do any of your stores  
6 have subpost offices?

7 A We have collections the same as the two in Rhode Island,  
8 but they do not have the post office, just the utilities.

9 Q My question is directed to the postal duties.

10 And in the State of Connecticut, do you have any stores with  
11 subpost offices?

12 A We have on that was just eliminated.

13 Q So you have none as of today?

14 A No. We do have one in New York State and one in Kansas.

15 Q Now, you mentioned the bulletin work in your prior answer.  
16 The company does distribute to various stores in the chain  
17 such things as are called Store Policy Bulletins?

18 A Yes, we do.

19 Q And also such things called General Information Bulletins?

20 A We do.

21 Q And these bulletins are distributed to a group of stores  
22 or to the entire chain?

23 A It's my opinion that about 95 per cent of them would be  
24 for all 83 stores; however, because of state regulations as  
25 well as sometimes a test display, it may be limited to fewer

1 stores.

2 Q So to illustrate the category of policy bulletins which  
3 are confined because of state law to one state, I show you what  
4 I have marked as Plaintiff's Exhibit 2 and ask if you can  
5 identify that?

6 (The document above-referred to  
7 was marked Petitioner's No. 2  
8 for identification.)

9 A Yes.

10 Q And for the record describe that briefly.

11 A Well, as I said, the state law would be a new 4 per cent  
12 sales tax.

13 Q What state is involved?

14 A This would be for the State of Rhode Island.

15 Q And that's the only place that that bulletin was sent  
16 to stores in?

17 A Being a Rhode Island state law, it could only go to Rhode  
18 Island stores.

19 Q So the answer to my question would be yes?

20 A Yes.

21 MR. DOMESICK: I offer that into evidence as Plaintiff's  
22 Exhibit 2.

23 MR. SHEEHAN: No objection.

24 HEARING OFFICER: I assume that is Petitioner's Exhibit  
25 No. 2?

MR. DOMESICK: Yes.

1 HEARING OFFICER: There being no objection, Petitioner's  
2 Exhibit No. 2 is received.

3 (The document above-referred to,  
4 marked Petitioner's Exhibit 2,  
was received in evidence.)

5 Q (By Mr. Domesick) And also I hand you what I have marked  
6 for identification as Petitioner's Exhibit 3 which is entitled  
7 General Policy Bulletin, is it not, Mr. Salmonson?

8 A This bulletin of a year ago is the same as the one we  
9 just okayed ---

10 MR. SHEEHAN: Just a minute. Could I see it for a minute?

11 Q (BY Mr. Domesick) Now you can continue.

12 A Well, basically this is the same as the last bulletin  
13 of a previous date when the tax was lower.

14 Q This was issued under your name?

15 A This particular one was issued under Leonard Salmonson.

16 Q He is your brother?

17 A That is right.

18 Q And what is his function again with the company?

19 A He is the president of it. . . . .

20 MR. SHEEHAN: If you are going to offer it, we have no  
21 objection.

22 MR. DOMESICK: Fine, I will offer it.

23 HEARING OFFICER: Being no objection. Petitioner's No. 3  
24 is received.

25 (The document above-referred to,  
marked Petitioner's Exhibit 3  
was received.)

1 Q (By Mr. Domesick) In addition to regulations concerning  
2 various state laws for your stores throughout the United  
3 States, you also issued bulletins with respect to other  
4 matters which may be confined to a smaller group of stores than  
5 systemwide?

6 A As I ---

7 Q There are some test cases that hit a few stores that  
8 could be not necessarily in Rhode Island but could be to a  
9 few stores, and I show you Petitioner's Exhibit 4 and ask  
10 you if you can identify that?

(The document above-referred to  
was marked Petitioner's No. 4  
for identification.)

11  
12  
13 A Yes, I can.

14 Q And would you describe that briefly for the record?

15 A This is a bulletin sent to Rhode Island and Massachusetts  
16 stores, some Massachusetts stores, for the price of milk.

17 Q Let me ask you if every Rhode Island store, was every  
18 Rhode Island store that existed on that day, namely June 23,  
19 1965, listed on that store policy bulletin?

20 A No.

21 Q There are exceptions? I'm sorry. I am looking at a  
22 different one. This is dated April 20, 1965. Would you tell  
23 me the number of Massachusetts stores listed on that?

24 A You asked me a prior question just now, how many Rhode  
25 Island stores.

Q I will withdraw that if you will answer this one.

1 April 20, 1965, how many Rhode Island stores which were open  
2 on that date do not appear on that list?

3 A You want the number of stores that we have in Rhode Island  
4 and are not listed on this list?

5 Q As of that date?

6 A As of this date? All right. Three stores.

7 HEARING OFFICER: Of the record.

8 (Discussion off the record.)

9 HEARING OFFICER: Back on the record.

10 MR. SHEEHAN: May we have the question read back?

11 (The last question was read by the reporter.)

12 THE WITNESS: And the answer is three stores.

13 Q (By Mr. Domesick) And those stores were three stores which  
14 did not sell milk, is that correct?

15 A That is true.

16 MR. DOMESICK: We have offered that into evidence.

17 HEARING OFFICER: Mr. Sheehan, any objection -- we have  
18 already received Petitioner's 4, excuse me.

19 Q (By Mr. Domesick) You also have either policy bulletins  
20 or general information bulletins which are distributed to the  
21 exclusion of certain states, is that correct, not just stores but  
22 states?

23 A Certain bulletins are sent to certain states.

24 Q And not to other states?

25 A As I said, it would be according to individual state laws.

Q I show you Petitioner's 5 and ask you if you can identify that briefly for the record, please.

(The document above-referred to was marked Petitioner's 5 for identification.)

A Yes, this is all stores except Connecticut stores.

Q And who is the person whose signature appears thereon?

A The office manager, Al Verrengia.

HEARING OFFICER: Incidentally, this is another bulletin?

THE WITNESS: This is an additional bulletin.

Q (By Mr. Domesick) It's a general information bulletin, is that right?

A Correct.

Q Issued May 6, 1965?

A Correct.

Q That makes no mention of state law except that it excludes Connecticut, is that correct?

A I am going to read it. I don't know just what it says. This does pertain to state law, yes.

Q But it makes no mention of state law was my question.

A The fact that it does not address ---

MR. SHEEHAN: Just answer the question yes or no.

THE WITNESS: What was the question.

Q (By Mr. Domesick) It was it makes no mention of state law in the general information bulletin?

A No.



1 MR. DOMESICK: I offer this into evidence also.

2 HEARING OFFICER: Mr. Sheehan, any objection to Petitioners'  
3 No. 5?

4 MR. SHEEHAN: No objection.

5 HEARING OFFICER: There being no objection, Petitioner's  
6 No. 5 is received.

7 (The document above-referred to,  
8 marked Petitioner's No. 5,  
was received in evidence.)

9 Q (By Mr. Domesick) I show you what I have marked as  
10 Petitioner's No. 3 and ask you if you can identify that for  
11 the record? Can you identify that?

12 (The document above-referred to  
13 was marked Petitioner's No. 6  
for identification.)

14 A Yes, I can.

15 Q And that is a general information bulletin?

16 A It's a general information bulletin.

17 Q Issued by whom?

18 A Issued by me to stores 2 through 40.

19 Q On what date?

20 A June 12, 1964.

21 Q Now, as of that date, if you can recall, from the store  
22 numbers 2 through 40, that includes what states?

23 A Rhode Island and Massachusetts.

24 Q Of those two states as of that date, how many of the  
25 stores, Massachusetts stores did you have at that time?

1 HEARING OFFICER: Their being no objection, Petitioner's  
2 Exhibit 6 is received.

3 (The document above-referred to,  
4 marked Petitioner's No. 6,  
was received in evidence.)

5 Q (By Mr. Domesick) Now, we have seen from a prior exhibit  
6 that the State of Rhode Island has a state tax?

7 A Yes.

8 Q And there is now a sales tax in the State of Massachusetts,  
9 are you aware of that?

10 A Yes, I am.

11 Q And are you aware also that the coverage of the two sales  
12 taxes may be different or is different, the items that are  
13 covered?

14 A There are ---

15 MR. SHEEHAN: I will object. We will stipulate there is  
16 a sales tax in the state of Massachusetts and a sales tax in  
17 the State Of Rhode Island; one may have no relation to the  
18 other.

19 Q (By Mr. Domesick) And also a sales tax in the State of  
20 Connecticut?

21 A True.

22 Q And the rate for each is different?

23 A I believe there are variations.

24 Q And certain items which are taxable in one state may not  
25 be taxable in the other?

1 A Correct.

2 Q I show you Petitioner's Exhibit 7 and ask you if you  
3 can identify that? Can you identify that, Mr. Salmonson?

4 (The document above-referred to  
5 was marked Petitioner's No. 7  
for identification.)

6 A Yes, I can.

7 Q And is that a store policy bulletin issued by the company?

8 A Yes.

9 Q In the name of whom?

10 A Leonard Salmonson.

11 Q And what is his office?

12 A President.

13 Q Bears the date of May 21, 1964, is that correct?

14 A Correct.

15 Q Refers to an increase evidently in the Rhode Island sales  
16 tax effective June 1, 1964, correct?

17 A Correct.

18 Q And that at the bottom of that it refers to certain items  
19 for which there might have been in the past some problem with  
20 respect to their taxability under the sales tax?

21 A Correct.

22 Q And that bulletin is limited to Rhode Island stores only?

23 A Correct.

24 Q And the clerks in those Rhode Island stores which must  
25 apply these store bulletins?

1 A Correct.

2 Q And in Massachusetts, your Massachusetts clerks would  
3 apply the Massachusetts sales tax?

4 A Correct.

5 Q And similarly in Connecticut?

6 A Correct, and in New York too.

7 MR. DOMESICK: And I offer that into evidence.

8 HEARING OFFICER: Any objection?

9 MR. SHEEHAN: No objection.

10 HEARING OFFICER: If there is no objection, Petitioner's  
11 No. 7 is received.

12 (The document above-referred to,  
13 marked Petitioner's No. 7, was  
received in evidence.)

14 Q (By Mr. Domesick) I may have touched on this item the  
15 last time we met. Refresh my memory with respect to your  
16 clerks in Rhode Island stores. Is there any pattern of fringe  
17 benefits, first, with respect to the general question?

18 A I don't quite follow the question.

19 MR. SHEEHAN: I don't either.

20 Q (By Mr. Domesick) Do you maintain a similar policy with  
21 respect to, for example, vacations for all of your Rhode  
22 Island employees?

23 MR. SHEEHAN: We've been all over this already.

24 MR. DOMESICK: I just suggested that we may have been.  
25 I haven't had an opportunity to review the record.

1 HEARING OFFICER: The witness may answer.

2 THE WITNESS: If I can understand the question correctly,  
3 the vacation benefits in Rhode Island, you want to know what  
4 they are?

5 Q (By Mr. Domesick) No, I asked if you had a common policy  
6 with respect to it for your employees in Rhode Island stores.

7 MR. SHEEHAN: Common policy. I object to the question.  
8 I don't know what he is talking about myself.

9 HEARING OFFICER: Mr. Witness, do you understand the  
10 question?

11 THE WITNESS: Not completely.

12 Q (By Mr. Domesick) What's your difficulty, Mr. Samonson?

13 MR. SHEEHAN: I object. Wait a minute now. I will object  
14 to that.

15 MR. DOMESICK: I don't think that is an objectionable  
16 question.

17 MR. SHEEHAN: The witness said he doesn't understand the  
18 question. I don't think the next question is "What don't you  
19 understand about it?"

20 HEARING OFFICER: Mr. Domesick, do you want to restate  
21 the question?

22 Q (By Mr. Domesick) In the State of Rhode Island, do you  
23 have a common vacation policy with respect to your employees?

24 A We do.

25 Q In the stores?

1 A Yes.

2 Q You do?

3 A Yes.

4 Q Is that policy the same -- by the way, what is that policy?

5 A The clerks in our stores in Rhode Island, Kansas, Oklahoma,  
6 and a few other places and Massachusetts have one week's  
7 vacation for one year of service and two weeks for five years  
8 of service.

9 Q And the State of Connecticut has the same policy, you  
10 can answer yes or no?

11 A In the State of Connecticut we have at this time a little  
12 vagueness because we have just purchased a company, and they  
13 did not have a definite policy. They did it more or less by  
14 whim, and we are trying to unravel a new vacation program.

15 Q I would suggest that not only their policy is vague but  
16 your answer to my question was also vague. I will ask it again.

17 MR. SHEEHAN: I move that remark be stricken.

18 Q (By Mr. Domesick) Mr. Salmonson, does that same policy --

19 HEARING OFFICER: I think I will grant that motion to  
20 strike those gratuitous remarks. As I understand it, you are  
21 trying to establish whether or not there is a vacation policy  
22 in Connecticut, I assume, with respect to any employees or  
23 groups of employees, is that so?

24 MR. DOMESICK: One step is the policy we have heard  
25 explicated with respect to the Rhode Island stores and with  
others also applicable at this time applicable to clerks in



1 your Connecticut stores.

2 MR. SHEEHAN: He has already answered the question.

3 HEARING OFFICER: I believe he answered the question. In  
4 the interest of expediting this hearing, what is the answer  
5 to that question?

6 THE WITNESS: It just so happens that I just talked to  
7 the payroll department downstairs just before I came because  
8 there were a few things I wasn't quite aware of myself, and  
9 from what she is trying to tell me here now, she was reading  
10 from the records or the papers that we took over from  
11 Connecticut when we purchased it a year ago, and she said it  
12 did not seem to have a clean cut policy, and we are trying --  
13 it seems that certain clerks received certain benefits, and  
14 they did not give the same to all, and we are trying here  
15 now to check with previous owners, managers, as to just what  
16 their method was as we are now faced with that problem. Now,  
17 in Connecticut it seems that certain old-time valued employees  
18 were getting two weeks for two years and others were getting  
19 one -- two weeks for five years, and that is right now up in  
20 the air.

21 Q(By Mr. Domesick) So the answer is, the short answer to my  
22 question, simple short answer is the policy you have explicated  
23 with respect to the clerks in Rhode Island does not apply to  
24 clerks in your Connecticut stores?

25 A Correct.

Q Now, when did this policy for your Rhode Island stores come into existence?

MR. SHEEHAN: Objection.

HEARING OFFICER: Overruled.

MR. SHEEHAN: No relevancy to it. What counts is what the policy is right now not when it came into existence.

HEARING OFFICER: I think he may have a point here on establishing the origin.

THE WITNESS: I believe it was last year.

Q (By Mr. Domesick) Would it have been June 23, 1965?

A May have been. I don't remember the exact date.

Q Was that pursuant to a store policy?

A We informed them by bulletin.

Q I show you, Mr. Salmonson, what I have marked as Petitioner's Exhibit 8 and ask you if that is the store policy bulletin which announced to employees the vacation policy in the State of Rhode Island and perhaps elsewhere?

(The document above-referred to was marked Petitioner's No. 8 for identification.)

A This bulletin went to Rhode Island and Massachusetts stores.

Q Well, the answer to my question is yes or no. I am asking you to identify it now. Is that the policy bulletin we have been referring to in our previous discussion?

A Yes, it is.

1 Q And that went out to certain named or numbered stores,  
2 is that correct, rather than states?

3 A Well, to simplify the answer it went to Rhode Island and  
4 Massachusetts stores.

5 Q Did it go to all Massachusetts stores?

6 A It did not go to all Massachusetts stores.

7 Q In fact how many Massachusetts stores did it go to?

8 A Went to four Massachusetts stores.

9 Q And you have how many Massachusetts stores now?

10 A At this particular time I think we had eleven. I will  
11 check.

12 Q It did go to all Rhode Island stores, however?

13 A ---

14 Q That were opened at that time?

15 A Yes, it did.

16 Q Went to all Rhode Island stores.

17 MR. DOMESICK: I offer this into evidence.

18 HEARING OFFICER: Any objection?

19 MR. SHEEHAN: No objection.

20 HEARING OFFICER: There being no objection, Petitioner's  
21 No. 8 is received.

(The document above-referred to,  
marked Petitioner's No. 8, was  
received in evidence.)

22  
23  
24 Q (By Mr. Domesick) Sir, I think we covered this again in  
25 the first hearing, Mr. Salmonson, but quickly if you could

1 price through all the stores in Rhode Island?

2 MR. SHEEHAN: Same objection.

3 HEARING OFFICER: Overruled.

4 THE WITNESS: I think I can answer the question in this  
5 manner, that we run reduced prices in 83 stores of the same  
6 items but there are occasions where a few items may be reduced  
7 in certain stores and certain states due to some nearby  
8 competitor cutting down. That wouldn't be one per cent of our  
9 merchandise.

10 Q Some of your stores in Rhode Island are what we call  
11 discount stores?

12 A Our stores?

13 Q Yes.

14 A We have no stores that go under the heading of discount  
15 drug stores in Rhode Island or anywhere else.

16 Q You have discount drug item stores, do you not, in states  
17 other than Rhode Island?

18 A We have just inaugurated a few new stores without  
19 pharmacists.

20 Q In Lowell, Mass., you have a store called Brooks Discount?

21 A In Lowell, Mass., we opened an Adams Store. We were  
22 refused a prescription license and changed the name to Brooks  
23 about a year ago.

24 Q What is the full trade name of Brooks?

25 A Brooks Discount Store, not a drug store.

Q Not a drug store because they don't have a pharmacist?

A That is right.

Q But sell items that you would sell in your drug stores in your other cities?

A True.

Q With respect to those stores, with respect to Brooks Discount are the sale prices of the items on sale there as they would be in a downtown store in Rhode Island, of course?

A It's a coincidence, but our downtown store is cutting prices practically the same as Lowell.

Q The answer to my question is yes or not. Which is practically the same? Your downtown drug store, do you have more than one there in Providence?

A We have one.

Q That's not a discount drug store?

A The name of it is not.

Q You have already said you have ---

MR. SHEEHAN: Can we stop arguing with the witness, and let's define the term discount.

THE WITNESS: You asked me one -- you asked what prices we sell at and then you asked me the name of the store.

HEARING OFFICER: Let me see if I understand, excuse me, Mr. Domesick. Are you trying to establish whether the prices for the items in the Brook store in Lowell are comparable to the prices for the same items in the Providence store, is that

1 A No, I am not.

2 Q What does it include? Let me ask you, would that include  
3 workman's compensation?

4 A I think we answered this last time. We gave Blue Cross  
5 and Physicians Service to all our employees in Rhode Island  
6 and Connecticut and Massachusetts only.

7 Q You never testified -- It's on the record? When did that  
8 take place?

9 A I don't remember. It may have been six months ago.

10 Q Same policy with respect to all three?

11 A Yes.

12 Q Isn't it taken out on a state-wide basis for the  
13 Massachusetts Blue Cross and Connecticut Blue Cross and Rhode  
14 Island Blue Cross?

15 A I said that the plan was one plan inaugurated by the  
16 Rhode Island Blue Cross for all three states.

17 Q And does it cover any employees in states other than  
18 those three?

19 A Only for those three states, Rhode Island, Massachusetts  
20 and Connecticut.

21 Q And by covering three states with one plan, did that  
22 prior to that inauguration of that did you have Blue Cross and  
23 Physicians Service coverage for employees in all three states?

24 MR. SHEEHAN: Objection.

25 HEARING OFFICER: I am inclined to sustain that objection.



1 stores.

2 HEARING OFFICER: If you are going to talk interchange,  
3 I've been waiting to hear something on interchange. I am going  
4 to sustain Mr. Sheehan's objection with respect to that question.

5 Q (By Mr. Domesick) Am I correct, Mr. Salmonson, in my  
6 memory that you previously testified there was very little  
7 interchange of clerks among your stores?

8 A I don't remember what I testified. If you are referring  
9 to ---

10 MR. SHEEHAN: That subject matter was also fully covered  
11 in the first day of hearing.

12 HEARING OFFICER: I am not sure there was much with  
13 respect to the interchange. At least it's not my recollection.  
14 I would like to see some exploration of the issue of interchange  
15 so the record will reflect adequate coverage. You know it is  
16 one of the more responsible criteria in a unit issue of this  
17 type. Let's have some explication on the record as to  
18 interchange, whether there is any, whether there isn't any,  
19 and if so how much of it.

20 Q (By Mr. Domesick) Mr. Salmonson, with respect to the  
21 interchange, that is the transfer or voluntary or involuntary  
22 from store to store within your chain, is there much inter-  
23 change of your clerks in Rhode Island?

24 A We have interchange. It's more prevalent among male  
25 stockmen who are clerks and stockmen as formally recorded.

1 There is less among women.

2 Q Now, would you classify, can you classify for us the  
3 degree of interchange? Is it slight, moderate, or heavy?

4 A It would be very common to have some of our men go to  
5 work in four, five stores between Rhode Island, Massachusetts  
6 and even Connecticut in a year or two period. Maybe hired in  
7 Fall River, then six months later Rhode Island, then back to  
8 Massachusetts, so forth.

9 Q These men you are referring to are the stockmen?

10 A Yes.

11 Q And how many stockmen are there in the Rhode Island stores?

12 A Usually have one for each store, some exceptions to that.

13 Q And you testified earlier that an employee, a clerk that  
14 is, who is hired for a store generally tends to stay in that  
15 particular store?

16 A Usually on female help. It's more common that they  
17 usually remain in that store, but however, there are occasions  
18 when ---

19 Q These are when employees would move from a city to another  
20 city to seek re-employment?

21 A Yes, and sometimes we open a new store and we may transfer  
22 some people who are willing to be transferred.

23 Q But you don't have a policy, I take it, that a store  
24 stockman in Fall River would go to a Connecticut store against  
25 his wishes?

1 A A stockman in Fall River would most likely got to Rhode  
2 Island and unlikely go to Connecticut.

3 Q As a general rule that doesn't happen frequently at all?

4 A Well, very frequently between Rhode Island and Massachusetts.

5 Q Do you keep records with respect to that?

6 A I believe we have some records.

7 MR. SHEEHAN: We don't have any records here on that.

8 Q (By Mr. Domesick) Does the company keep any records on  
9 that with respect to that?

10 A They would have some records, yes.

11 Q Would those records reflect the degree of transfer or  
12 interchange?

13 A They would.

14 Q Among stockmen?

15 A They would.

16 Q Between states?

17 A They would, yes.

18 Q Would you make those available for the N.L.R.B.?

19 A We would.

20 Q Now, when you keep your records, an employee's records,  
21 you put a store number next to his name or somewhere in the  
22 vicinity of his name, is that correct?

23 MR. SHEEHAN: I don't see what the relevancy of this is.

24 HEARING OFFICER: I am not sure I do at this time. Let's  
25 see where he is going.

1 THE WITNESS: When he is hired?

2 Q (By Mr. Domesick) Correct.

3 A When he is hired, it is usually recorded what store they  
4 assign him to.

5 Q And on subsequent transfer when it shows an employee is  
6 transferred from one store to another, is that permanent number  
7 transferred with him?

8 MR. SHEEHAN: May we stipulate that the company knows  
9 where an employee is working at any given time. Some records  
10 reflect that John Doe worked at one store, and if he is  
11 transferred, the company records reflect that, and if he quits,  
12 the company records reflect that.

13 HEARING OFFICER: Is that what you are seeking?

14 MR. DOMESICK: The truth of the matter is that you have  
15 not much transfer among stockmen.

16 HEARING OFFICER: Off the record.

17 (Discussion off the record.)

18 HEARING OFFICER: Back on the record.

19 Q (By Mr. Domesick) Now, with respect to the interchange  
20 of stockmen among your Rhode Island stores, in the State of  
21 Rhode Island -- prior to asking a question just so I get at  
22 this point in the record, how many stockmen are there working  
23 in Rhode Island stores?

24 MR. SHEEHAN: I think the record already shows that.

25 MR. DOMESICK: I don't remember the answer.

1 MR. SHEEHAN: We are not in some sort of an adversary  
2 procedure where you ask a witness the same question over and  
3 over again.

4 HEARING OFFICER: I think it has been answered. Let's  
5 look at it as a preparatory question.

6 THE WITNESS: Approximately 25, give or take one or two.

7 Q (By Mr. Domesick) When a stockman is on vacation, how is  
8 that store covered with respect to the duties that he would  
9 normally perform?

10 A Well, many things could happen depending on the stores.  
11 In some cases no one would come in at all; some cases one man  
12 would shuffle between two stores; and in some cases we pull a  
13 man out of a bigger store. We happen to have some stores with  
14 three men or two men, and we might divide them, pull them  
15 out of the store for that week.

16 Q For the vacation period?

17 A Yes.

18 Q And when a stockman is out ill, is the vacancy filled  
19 in essentially the same way?

20 A Most likely, yes.

21 Q And has it happened on occasion that stockmen are promoted  
22 to store manager?

23 A Yes, sir.

24 Q And when that stockman is promoted to manager, how is the  
25 stockman's job filled?

1 A Well, that is the biggest method of interchange where  
2 people are shifted from one store to another in accordance  
3 with their experience. In fact that happens almost continually  
4 where a man is taken from a lower volume store or a man who  
5 has more experience and will be shifted to one where there is  
6 experience required, and that same method applies where people  
7 are leaving the company continuously.

8 Q Let's stick with the promotion aspect. You only have  
9 a hand full of nonpharmacy managed stores in Rhode Island?

10 A True.

11 Q And those managerships do not change frequently?

12 A True.

13 Q So that if a stockman is promoted to manager, that  
14 tends to become a fairly permanent position?

15 A True.

16 Q And his position is filled generally as you seemed to  
17 state from within the company?

18 A True.

19 Q From a person who is also a stockman?

20 A Yes.

21 Q But not necessarily a stockman. Are all your managers  
22 stockmen?

23 A Yes. 99 per cent, yes.

24 Q That's the designation. And when you promote another  
25 stockman to fill -- when you transfer a stockman to fill the



## AFTERNOON SESSION

(12:45 p.m.)

HEARING OFFICER: On the record.

## CROSS EXAMINATION

Q (By Mr. Sheehan) Mr. Salmonson, does the company have one central office?

A We do.

Q Where is that located?

A 75 Sabin Street, Pawtucket, R. I.

Q Is all the record keeping done above the store level at that central office?

A It is.

Q Do you have payroll records for all of the stores in the system?

A All kept at our office, yes.

Q And do all of the officers of the company have their offices at the said Sabin Street, Pawtucket, address?

A Yes, they do.

Q What is the president of the company?

A Leonard Salmonson.

Q Does he have a specific area of the business, the operation of the business of the company that he is responsible for?

A Yes, general office and accounting is under his jurisdiction.

HEARING OFFICER: What is the first word?

THE WITNESS: The general office, the main office. All

1 of the accounting and finance is all under his jurisdiction.

2 Q Now, you have another brother who is an officer of the  
3 company?

4 A I have a brother Samuel, secretary, in charge of all  
5 buying for the entire company.

6 Q Do you have another brother who is an officer of the  
7 company?

8 A Another brother Donald who is vice president in charge  
9 of the entire warehousing of the entire chain as well as all  
10 the advertising for the entire chain.

11 Q And you yourself are the treasurer and responsible for  
12 store operations, is that correct?

13 A That is correct, yes.

14 Q Now, the central office -- do you also have a central  
15 warehouse?

16 A We have a central warehouse that ships to every one of  
17 our stores.

18 Q And do you stock items in that warehouse that are carried  
19 in all stores in the system?

20 A Yes.

21 Q And how are those items shipped out? Do you ship them  
22 out in your own trucks?

23 A With our own truck except our stores in Oklahoma and  
24 Kansas; we use public carriers.

25 Q Do you have an ordering system from the stores to the

1 warehouse?

2 A We have a printed order form that they use in every store,  
3 mailed to the office, the orders are filled and shipped from  
4 that order.

5 Q And does that order form contain the names of items to  
6 be ordered and the prices?

7 A It does, yes.

8 Q Now, are all personnel records for all of the stores kept  
9 at the central office?

10 A They are.

11 Q Now, with the exception of laws that apply to pharmacists,  
12 state sales taxes or state unemployment taxes, or items which  
13 are fair-traded by state law, is there any part of the operation  
14 of the company in Rhode Island which differs from the  
15 operation of the company in any other state?

16 MR. DOMESICK: Objection.

17 HEARING OFFICER: What's the basis of the objection?

18 I think he is trying to show if there is any distinction between  
19 the operations of the stores in Rhode Island.

20 MR. DOMESICK: If the question was directed to the operation  
21 of a drug store as a drug store with all the listed exceptions,  
22 I will withdraw my objection.

23 HEARING OFFICER: Is that the nature of the question?

24 MR. SHEEHAN: I think the question has to stand on its  
25 own merit.

1 Would you read the question back. I think the witness  
2 has forgotten by now.

3 (The pending question was read by the reporter.)

4 THE WITNESS: Basically, no.

5 Q (By Mr. Sheehan) When I said company, I was referring  
6 to stores, Mr. Salmonson. Would your answer still be the same?

7 A Yes.

8 Q Now, you have enumerated the officers of the company and  
9 the specific area of the company's operation for which they are  
10 responsible. Does that cover basically all the policy areas  
11 of the company and all of the officers of the company?

12 A ----

13 Q Do you understand my question?

14 A I think it would include all the officers of the company.

15 Q And the officers you have enumerated determine all the  
16 operating policies of the company, is that correct?

17 A Yes.

18 HEARING OFFICER: This is officers?

19 MR. SHEEHAN: Officers.

20 Q (By Mr. Sheehan) Now, who is the next in line in the  
21 supervision of the operation of the stores under you?

22 A Mr. Henry Henault.

23 Q And does he have a title?

24 A He is referred to as general supervisor.

25 Q And what store area does he supervise?

1 A Actually he supervises all stores.

2 Q All the stores including those in Oklahoma and Kansas?

3 A Yes.

4 Q Now, who is the next in line of supervision under  
5 Mr. Henault?

6 A Then we would have approximately seven supervisors.

7 Q These are what we have been referring to as area supervisors?

8 A That is correct.

9 Q Now, the record already contains the stores which Dillenback  
10 supervises, the stores which Mr. Dame supervises, and the stores  
11 which Mr. Fink supervises, and these are the three -- strike  
12 that. Are these the three area supervisors who cover the  
13 Rhode Island, Massachusetts and Connecticut stores, Mr. Fink,  
14 Mr. Dillenback, and Mr. Dame?

15 A Well, as I ---

16 MR. DOMESICK: Objection. The record already indicates  
17 that there is a "local supervisor" -- I have no idea what the  
18 title means -- in Connecticut. The question is misleading from  
19 the evidence.

20 HEARING OFFICER: I think I see your point, Mr. Domesick.  
21 Can you restate the question.

22 Q (By Mr. Sheehan) Are these the three area supervisors  
23 who cover the stores in the Connecticut, Massachusetts, and  
24 Rhode Island area?

25 A Well, there is a minor exception that Mr. Henault ---

1 Q Are these the three area supervisors who cover the stores  
2 in Connecticut, Massachusetts, and Rhode Island?

3 A Yes.

4 Q All right. Now, in Connecticut you have a so-called  
5 local supervisor, is that correct?

6 Q Yes.

7 Q A Mr. Seltzer?

8 A Yes.

9 Q And did he work under Mr. Dillenback until very recently?

10 A Yes.

11 Q Now, Mr. Salmonson, do you select the stores that an  
12 area supervisor will have under his control or supervision?

13 A I do.

14 Q And will you tell us how you make the determination of  
15 what stores will be under what area supervisor?

16 A Well ---

17 Q Let me say, if you have to go back and show some historical  
18 background because of the growth of the system, do that.

19 A Well, what we generally do is as we buy, acquire stores,  
20 open stores we then investigate the work load of each man and  
21 decide, based on his talent and experience, which stores he  
22 would be best suitable to supervise and depending on the number  
23 he already has and so forth and so on. We don't have an  
24 exact formula.

25 Q Are there times when you will remove a store or stores



1 from the control of one area supervisor or place them in the  
2 control of another area supervisor?

3 A Yes, we do.

4 Q And on what grounds would you do that?

5 A We may do it because we feel he is unable to cover those  
6 stores thoroughly, may have too many, may turn it over to  
7 another supervisor who may be able to spend more time in  
8 those stores; or it also may be that he is not as well  
9 qualified as the next man to handle a specific store.

10 Q Now, do you have a group of store clerks who are known  
11 as cosmeticians?

12 A We do, yes.

13 Q Is there somebody connected with the company in a  
14 supervisor level who is responsible for the operation of the  
15 cosmetic counters of the stores?

16 A We have a cosmetic supervisor.

17 Q What's her name?

18 A Miss Jay Chabot.

19 Q Now, to whom does Miss Chabot report?

20 A Well, either to Mr. Henault or myself or to both of us.

21 Q And throughout what stores is she responsible for cosmetic  
22 counter operations?

23 A Primarily Rhode Island, Massachusetts, and Connecticut.

24 Q And what is the nature of her duties?

25 A Well, her job is to see that the cosmetic departments

1 are in good condition, appearance, merchandise is properly  
2 priced, and the clerks are well informed or the individual  
3 cosmeticians are informed on all her duties and general  
4 operations of that department.

5 HEARING OFFICER: May we have a stipulation on this  
6 Miss Chabot?

7 MR. SHEEHAN: That she is a supervisor as defined in the  
8 Act, yes, I am perfectly willing to stipulate.

9 MR. DOMESICK: May we go off the record?

10 HEARING OFFICER: Yes. Off the record.

11 (Discussion off the record.)

12 HEARING OFFICER: Back on the record.

13 Q (By Mr. Sheehan) Mr. Salmonson, does Miss Chabot hire  
14 some cosmeticians herself?

15 A She does up to a point.

16 Q Now, there has been considerable testimony about stockmen  
17 in the record. Who does the hiring of stockmen?

18 A Well, I hire most of them myself. Mr. Henault will hire  
19 some. Some occasions, infrequent occasions Mr. Dillenback,  
20 Mr. Fink may hire a few. It would be infrequent.

21 Q It is not the practice, however, for store managers to  
22 hire stockmen, is that correct?

23 A No, it is not.

24 Q They are hired at a level above the store manager?

25 A That is right.

1 Q And where do you get the additional people from?

2 A We draw them from various stores that may be able to  
3 release that person for the day from their regular duties.

4 Q Now, at times have these people that supplement the  
5 inventory crew be inventorying stores in Rhode Island though  
6 they themselves were permanently assigned to stores in  
7 Massachusetts?

8 A Almost every inventory crew would have Rhode Island and  
9 Massachusetts people regardless where the inventory, in which  
10 state the inventory is being taken.

11 Q Now, do you use shopping services to check on the quality  
12 of work in the various stores?

13 A We do.

14 Q And what are the names of them?

15 A The biggest company is the Willmark System that, I  
16 believe, checks everyone of our stores.

17 Q And do they make a report on each store that they check?

18 A They send a written report to my office.

19 Q In Pawtucket?

20 A That is right.

21 Q And do you also use another shopping service?

22 A We have few. We have the Dale System. They cover --  
23 I'm sorry.

24 Q What do they cover?

25 A They actually cover all of our stores except Oklahoma and

1 Kansas.

2 Q And do they also report on each store that they check?

3 A The same system as the Willmark system.

4 Q They report directly to you, in other words, in Pawtucket?

5 A They do.

6 Q Now, we already have some testimony on this, Mr. Salmonson,  
7 no need to cover the same ground again. I want to get into  
8 the advertising. I think as you testified this morning, at  
9 least in part, you may not have covered the whole subject matter,  
10 all advertising in newspapers throughout the system is done  
11 from the Pawtucket office, is that correct?

12 A Right, yes.

13 Q And do you have a basic format that is to appear in each  
14 newspaper in which the ad appears?

15 A We do.

16 Q And is that format made up in the Pawtucket office?

17 A It is made up in Pawtucket.

18 Q Now, there was some reference in the first day's hearing  
19 about a listing in the Attleboro Sun, an ad of a store in  
20 Rhode Island. Do you recall that store?

21 A Yes.

22 Q What is the number?

23 A The store is No. 33.

24 Q When was that store oppened?

25 A About six months ago, first of the year.

1 Q Sometime in January of this year?

2 A Yes.

3 Q And since that store opened, have you listed that  
4 store in the advertising done in the Attleboro Sun?

5 A Yes.

6 Q What is the street, city and state location of the store?

7 A Central Avenue, Pawtucket, Rhode Island.

8 Q Now, in your -- strike that. The newspaper advertising  
9 is done primarily on a weekly basis throughout the store  
10 system, is that correct?

11 A Correct.

12 Q And is there a specific day or days each week when the  
13 ad appears?

14 A Usually all newspapers carry the ad on a Wednesday, in  
15 the Wednesday edition. There are a few exceptions where there  
16 is a morning paper.

17 Q And with the exception now of fair-traded items which may  
18 appear in the ad and which are controlled by state law, are the  
19 selling prices set forth in these ads the same for the items  
20 that appear as the items of merchandise throughout the system?

21 A 95 per cent of them are. There are a few exceptions.  
22 Sometimes a supply of merchandise may cover only 80 per cent of  
23 the stores that particular week, on particular item may be  
24 short, or a few cities may have a few local price problems where  
25 four or five out of the 60 items may be changed in price.

1 Evening Bulletin advertisement of the company?

2 A That are located in Massachusetts?

3 Q No, all of the stores. In other words, you say all of  
4 the Rhode Island stores, you can say so. If some of the Rhode  
5 Island stores are not covered in that ad, such as Woonsocket,  
6 North Kingston, say so.

7 A All our stores in Rhode Island and the following Massachusetts  
8 stores are covered in the Providence Journal and Evening  
9 Bulletin: Massachusetts stores are Attleboro ---

10 MR. DOMESICK: Could you also give the number at the same  
11 time?

12 THE WITNESS: Store No. 6, Store No. 9 Fall River, Store  
13 No. 17, Pleasant Street, Fall River, and Store No. 36 Somerset,  
14 Mass.

15 Q (By Mr. Sheehan) That covers them all?

16 A I believe so.

17 Q You also advertise in the Pawtucket, R. I., Times, is  
18 that correct?

19 A Pawtucket Times, yes.

20 Q And what stores do you list in the Pawtucket Times ad?

21 A We list Attleboro, Mass., and East Providence and North  
22 Providence and Salesville and maybe a few others, Central Falls.

23 MR. DOMESICK: If I may, Attleboro would be the only  
24 Massachusetts store you mentioned; the rest are in Rhode Island.

25 THE WITNESS: I believe so.



1 Q (By Mr. Sheehan) Now, do you have a method of running  
2 merchandise from store to warehouse?

3 A Yes. Our truck will pick up merchandise to be returned  
4 for various reasons.

5 Q And do you use a form for that purpose, a return  
6 merchandise form?

7 A We have a form, a special form that all our stores use  
8 for returns.

9 Q You say the same method of return and the same paper work  
10 is done in returning merchandise wherever it comes from?

11 A All stores use this form.

12 Q Now, in addition to the salary of the store clerks, do  
13 you have a system of commissions called a P.M.?

14 A We have a P.M. system that is available to clerks.

15 Q Is that available to all clerks in the system?

16 A Available to everyone of our drug stores.

17 Q I show you this list and ask you just to identify it.

18 A This is it.

19 Q That is a list of P.M.'s, is it?

20 A It is.

21 MR. SHEEHAN: May I have this marked for identification.

22 (The document above-referred to  
23 was marked Employer's No. 1  
for identification.)

24 Q What is a P.M.?

25 A A P.M. is sort of accepted terminology for commission.

1 HEARING OFFICER: So when you see the term P.M., we may  
2 connect it with commissions?

3 MR. SHEEHAN: That is right.

4 Q (By Mr. Sheehan) Is that, in effect, a P.M. is a specific  
5 commission on a specific item of merchandise, is that correct?

6 A That is right.

7 Q There is no percentage of an employee's sales that he  
8 gets as a commission?

9 A True.

10 Q They get a commission on each item they sell to which  
11 a commission applies?

12 A That is correct.

13 Q And that commission may vary by items any number of times?

14 A That is right.

15 MR. SHEEHAN: I will offer this.

16 HEARING OFFICER: Any objection to the receipt of Employer's  
17 Exhibit No. 1, Mr. Domesick?

18 MR. DOMESICK: Only in as -- you may suggest this is  
19 proper for cross examination in which case I will wait. The  
20 answer that I understand, before I can understand the relevancy  
21 or value, that it was available to all drug stores. I do not  
22 mean that the answer is all use it or all clerks in all drug  
23 stores get P.M.'s who sell merchandise. If the latter fact is not  
24 true, I would have to object to the relevancy.

25 HEARING OFFICER: Do you wish to declare for the record,

1 Mr. Sheehan, what purpose you are offering it for, Employer's  
2 Exhibit No. 1?

3 MR. SHEEHAN: To show that throughout the store system all  
4 sales clerks are paid P.M.'s or commissions which are the  
5 same in every store on the items listed on the P.M. list and  
6 the commission along side the item.

7 MR. DOMESICK: Yes, that doesn't answer the question.  
8 With all due respect, I haven't heard the witness testify that  
9 all clerks in all stores get all these P.M.'s every time they  
10 sell all the items.

11 MR. SHEEHAN: I will readdress the question.

12 Q (By Mr. Sheehan) Mr. Salmonson, on the P.M. list marked  
13 now as Employer's 1 for identification, there is shown a list  
14 of items and under the P.M. heading a certain number of cents.  
15 Is that the cent commission paid for the sale of that item?

16 A Yes.

17 Q Is that commission paid to each clerk that sells that item?

18 A It is, yes.

19 HEARING OFFICER: Is it paid to each clerk in all of your  
20 stores in the system?

21 THE WITNESS: It is paid to all clerk s who care to use  
22 this system. They are eligible to use it with the exception  
23 of certain stockmen and possibly certain clerks who work in  
24 a department such as a fountain or a specific department that  
25 has no P.M. merchandise, we will say houseware. However, every

1 drug and toiletry clerk that has the availability of selling  
2 this merchandise has the opportunity to use this P.M. system  
3 unless they themselves do not care to.

4 HEARING OFFICER: Once again, does this apply to all the  
5 clerks?

6 THE WITNESS: All the clerks throughout the system with  
7 the exceptions I mentioned.

8 MR. DOMESICK: I still say this doesn't -- this "for those  
9 who want to take advantage of it." Is this list in every store --  
10 obviously if an employee wants to get four more cents for  
11 selling flaxseed oil ---

12 MR. SHEEHAN: I will offer this as a full exhibit.

13 HEARING OFFICER: Your objection is noted, Mr. Domesick,  
14 and the objection is overruled. Employer's 1 is received.

15 Q (By Mr. Sheehan) Now, Mr. Salmonson, do you largely  
16 determine the personnel policies of the store?

17 A Yes, I do.

18 Q And do you issue store bulletins informing clerks, managers  
19 and assistant managers what those store policies are?

20 A We do.

21 MR. DOMESICK: May I see that before you offer it?

22 Q (By Mr. Sheehan) I show you a document. Can you identify  
23 that? Just identify it.

24 A Yes. This is a bulletin sent to all our stores by our  
25 office.

1 Q What is it?

2 A Store Policy Bulletin No. 10226.

3 MR. SHEEHAN: May I have this marked for identification.

4 (The document above-referred to  
5 was marked Employer's 2 for  
6 identification.)

7 Q (By Mr. Sheehan) Now, what does the subject matter of the  
8 bulletin -- don't read it verbatim, just in general terms.

9 A Generally this bulletin is requesting how to handle  
10 returns of defective radios.

11 Q At the store level?

12 A At the store level.

13 Q And is this bulletin directed to all personnel in the  
14 stores who may receive returns from customers of so-called  
15 defective radios?

16 A For all stores and all people involved.

17 MR. SHEEHAN: I will offer it as Employer's 2 as a full  
18 exhibit.

19 HEARING OFFICER: Mr. Domesick, any objection to the  
20 receipt of Employer's Exhibit 2?

21 MR. DOMESICK: Again, this may be proper for cross  
22 examination, it maybe useful here. It's my understanding that  
23 not all stores sell radios and tape recorders and perhaps it  
24 should be proper at this point to identify those stores which  
25 do or do not sell the items covered.

HEARING OFFICER: The witness testified that the bulletin

1 is addressed to all stores.

2 MR. DOMESICK: That designation would carry no effective  
3 weight unless all the stores carried these items.

4 HEARING OFFICER: Employer's No. 2 is received. Your  
5 objection is noted, Mr. Domesick.

6 (The document above-referred to,  
7 marked Employer's No. 2, was  
received in evidence.)

8 Q (By Mr. Sheehan) Now, Mr. Salmonson, can you identify the  
9 document I now hand you?

10 A Yes, this is a code for all store employees.

11 MR. SHEEHAN: May I have it marked Employer's Exhibit 3.

12 (The document above-referred to  
13 was marked Employer's Exhibit 3  
for identification.)

14 Q (By Mr. Sheehan) Now, Mr. Salmonson, what is Employer's  
15 Exhibit 3 used for?

16 A It's to acquaint all the clerks with the every day duties  
17 they should observe..

18 MR. SHEEHAN: I will offer that.

19 MR. DOMESICK: No objection.

20 HEARING OFFICER: Once again, is this issued to all  
21 stores in the system?

22 THE WITNESS: yes, it is.

23 Q (By Mr. Sheehan) In fact it is handed to all employees,  
24 isn't it?

25 A Yes.



1 Q At the time they are hired?

2 A That is true.

3 MR. DOMESICK: I have no objection.

4 HEARING OFFICER: There being no objection, Employer's  
5 Exhibit No. 3 is received.

6 (The document above-referred to,  
7 marked Employer's Exhibit 3,  
was received in evidence.)

8 HEARING OFFICER: Off the record.

9 (Discussion off the record.)

10 HEARING OFFICER: Back on the record.

11 Q (By Mr. Sheehan) Mr. Salmonson, can you identify this  
12 document?

13 A Yes. It is a document sent by the Dale System for  
14 responsibility of the sales personnel.

15 MR. SHEEHAN: May I have this marked Employer's No. 4.

16 (The document above-referred to  
17 was marked Employer's No. 4  
for identification.)

18 HEARING OFFICER: I gather that they are uniformly dis-  
19 tributed to all stores?

20 MR. SHEEHAN: That is right.

21 Q (By Mr. Sheehan) How do you make use of Employer's 4 for  
22 identification? What do you do with it?

23 A This particular information is posted in the stores.

24 Q In each store?

25 A In each store; it may be in a few different places.

1 Q Do you use this card also for the stores in the western  
2 states, Oklahoma and Kansas?

3 A That card is used in every one of our stores.

4 MR. DOMESICK: If I may, then it is used in stores, even  
5 stores which are not serviced by Dale System?

6 THE WITNESS: That is true.

7 MR. SHEEHAN: I will offer Employer's 4 as a full exhibit.

8 MR. DOMESICK: No objection.

9 HEARING OFFICER: Employer's 4 is received.

10 (The document above-referred to,  
11 marked Employer's Exhibit 4,  
was received in evidence.)

12 Q (By Mr. Sheehan) Can you identify this document,  
13 Mr. Salmonson?

14 A Yes. It's a Store Policy Bulletin No. 10228, the subject  
15 is "New Employees Bonding Questionnaire," addressed to all  
16 stores.

17 MR. SHEEHAN: May I have this marked Employer's No. 5  
18 for identification.

19 (The document above-referred to  
20 was marked Employer's No. 5  
for identification.)

21 Q (By Mr. Sheehan) Is Employer's 5 for identification --  
22 does Employer's 5 for identification contain a bonding  
23 questionnaire which all applicants for employment must complete?

24 A That is correct.

25 Q At the time of hiring?

1 A Correct.

2 MR. SHEEHAN: I will offer this as Employer's 5.

3 MR. DOMESICK: I am going to have to object, and drawing  
4 upon knowledge of last year's hearing, there is no bonding  
5 although the employees fill out the questionnaire, there is no  
6 actual bonding that takes place. There is an insurance company  
7 that covers these employees. So for my purposes and the  
8 purposes of the Board, they are worthless backed up by no  
9 obligation on the part of the company.

10 HEARING OFFICER: Is this form used in all the stores  
11 throughout the system?

12 THE WITNESS: This form is used in all the stores.

13 HEARING OFFICER: No bonding is required?

14 THE WITNESS: It has nothing to do with bonding; it's just  
15 a form.

16 MR. SHEEHAN: My question was do all applicants for  
17 employment complete this bonding questionnaire before the  
18 company employes them. The company does not in fact bond them.

19 MR. DOMESICK: If it is not agreed that there is no  
20 actual bonding of any employee who may fill out this inquiry,  
21 then I have no objection.

22 HEARING OFFICER: I think he has made it abundantly clear.  
23 Exhibit No. 5, Employer's Exhibit No. 5 will be received.

24 (The document above-referred to,  
25 marked Employer's No. 5, was  
received in evidence.)

1 Q (By Mr. Sheehan) Now, can you identify this document,  
2 Mr. Salmonson?

3 A Yes, it is Store Policy Bulletin No. 10246 to all stores  
4 in the handling of store bulletins.

5 MR. SHEEHAN: May we have this marked Employer's No. 6  
6 for identification.

7 (The document above-referred to  
8 was marked Employer's No. 6  
for identification.)

9 MR. SHEEHAN: I will offer this as Employer's 6.

10 HEARING OFFICER: Mr. Domesick, any objection to  
11 Employer's 6?

12 MR. DOMESICK: Not to the fact that it was sent out to  
13 all stores.

14 HEARING OFFICER: Employer's Exhibit 6 was received.

15 (The document above-referred to,  
16 marked Employer's Exhibit No. 6,  
was received in evidence.)

17 Q (By Mr. Sheehan) Can you identify this document,  
18 Mr. Salmonson?

19 A Yes, it is Store Policy Bulletin No. 10212 for all stores  
20 in reference to manufacturer's discount coupons.

21 MR. SHEEHAN: May I have it marked Employer's No. 7 for  
22 identification.

23 (The document above-referred to  
24 was marked Employer's No. 7  
for identification.)

25 MR. SHEEHAN: I will offer this as Employer's 7.

1 MR. DOMESICK: This refers to those coupons which  
2 individuals would receive at home and then cash in when they  
3 buy the item and get a reduced rate on the item, a nickel or  
4 a dime off?

5 THE WITNESS: I don't know. I didn't read the contents  
6 of this bulletin. That is so.

7 MR. DOMESICK: I have no objection to it.

8 HEARING OFFICER: Employer's Exhibit No. 7 will be  
9 received.

10 (The document above-referred to,  
11 marked Employer's No. 7, was  
received in evidence.)

12 Q (By Mr. Sheehan) Can you identify that document,  
13 Mr. Salmonson?

14 A Yes, it is a bulletin to all stores referring to check  
15 cashing losses.

16 Q Now, referring to Employer's Exhibit No. 8 for identifica-  
17 tion, the bulletin referred to some action to be taken as to  
18 clerks on that?

19 MR. DOMESICK: May I have a copy of that?

20 (Document handed to Mr. Domesick)

21 THE WITNESS: This tells each store, every store to post  
22 this rules and regulations about check cashing, this circular  
23 giving the regulations.

24 MR. SHEEHAN: I will offer that as a full exhibit,  
25 Exhibit No. 8.

1 HEARING OFFICER: Mr. Domesick, any objection to Employer's  
2 Exhibit No. 8?

3 MR. DOMESICK: No.

4 HEARING OFFICER: Employer's Exhibit No. 8 is received.

5 (The document above-referred to  
6 was marked Employer's Exhibit  
7 No. 8 for identification and  
8 was received in evidence.)

9 Q (By Mr. Sheehan) Now, Mr. Salmonson, there has been  
10 some reference both this morning and the first day of hearing  
11 about the Blue Cross and Physician's Service coverage for  
12 sales clerks, employees in the Rhode Island, Massachusetts  
13 and Connecticut stores. Is that a contract that the company  
14 has with Blue Cross of Rhode Island?

15 A Yes, it is.

16 Q And do you maintain the records for that plan at the  
17 Pawtucket office?

18 A Everything is handled in our main office.

19 Q All premiums are paid from the main office?

20 A Everything.

21 Q Now, referring to Petitioner's 5, which is a general  
22 information bulletin to all stores except Connecticut sotres,  
23 and referring to directions and forwarding of local welfare  
24 and medicare checks from government agencies to the home office,  
25 would you look at that for a moment?

A ---

1 Q Have you read it, Mr. Salmonson?

2 A Yes, I have.

3 Q Can you tell why that didn't go to the Connecticut stores?

4 A Yes, Connecticut Welfare Department refuses to mail checks  
5 into Rhode Island.

6 Q And that's the only reason that bulletin wasn't directed to  
7 the Connecticut stores, is that right?

8 A That is right.

9 Q Now, in your previous testimony you stated that the  
10 Providence Wholesale Drug Store which is located in Providence  
11 services certain of the company's stores in Massachusetts  
12 and Rhode Island, is that right?

13 A Right.

14 Q That company also services the State of Connecticut, is  
15 that right?

16 A Yes, it does.

17 Q But you do not use it for your Connecticut stores?

18 A No, we don't.

19 Q Do you have other suppliers that service stores in  
20 Rhode Island and Massachusetts and Connecticut?

21 A Yes, we have McKesson.

22 Q McKesson and Roberts?

23 A Yes.

24 Q They cover all of your stores to some extent?

25 A I think we buy from McKesson, every one of our stores.



1 Q Now, do you have another supplier, not of drugs but of  
2 any other items, sundry or services, that supply your Rhode  
3 Island and Massachusetts and Connecticut stores?

4 A Yes, we have the Berkey Photo Finishing, supplies a number  
5 of our stores in Rhode Island, Massachusetts and Connecticut.

6 Q What type of service or what kind of product do they  
7 supply?

8 A They do the photo finishing, developing and finishing  
9 of pictures.

10 Q Where is that company plant located?

11 A They have one plant in Boston and one in New York that  
12 I know of.

13 Q Now, is there any other -- strike that. Do you do business  
14 with another photo finishing company that services Rhode  
15 Island, Massachusetts, Connecticut or some of those states?

16 A Yes, we have a technicolor company.

17 Q Where are they located, in what states?

18 A They also have a Boston and New York plant, and they also  
19 have a number of our stores in Rhode Island and Massachusetts.

20 Q Now, the postal clerks work in the stores in Rhode Island.  
21 Do they sell items to customers; when I say sell, do they sell  
22 postal items to customers in the substations?

23 A They sell money orders and stamps, etc.

24 Q And they collect the money for it?

25 A They do.

1 which is in evidence, and ask you to read it please.

2 A Store Policy Bulletin ---

3 Q Don't read it out loud, just read it to yourself.

4 A I see.

5 Q I think you testified on direct examination that went to  
6 only four Massachusetts stores; is that correct?

7 A Yes.

8 Q Is there some reason that it did not go to <sup>the</sup> other six or  
9 seven Massachusetts stores?

10 A Yes.

11 Q What was the reason?

12 A The reason was that those stores that did not receive the  
13 bulletin were stores that we acquired through acquisition  
14 rather than opening our own, and we inherited a certain amount  
15 of the previously accepted policy that those clerks were  
16 receiving, and we did not care to create any change, any  
17 ill will through any drastic changes.

18 Q Is it true that where you open a store yourself, you apply  
19 all existing company policies as to employees across the board  
20 to that store?

21 A Yes, such as Store 36 of Massachusetts which was opened  
22 by us.

23 Q Now, is it also true that when you acquire by purchase a  
24 store or a small chain of stores that you keep in effect the  
25 existing policies insofar as vacation benefits are concerned,

1 MR. SHEEHAN: You object.

2 MR. DOMESICK: I think a question and answer like that  
3 should not be permitted to stand. It has no probative value.  
4 I don't see the value in the record.

5 HEARING OFFICER: I am going to let it stand. He may  
6 answer.

7 MR. SHEEHAN: I think he has already answered.

8 HEARING OFFICER: You are free to pursue it in your  
9 cross examination. This is a matter which we opened up  
10 considerably earlier.

11 Q (By Mr. Sheehan) Mr. Salmonson, I think you have testified  
12 that by enlarge the store manager makes the initial decision  
13 to hire a sales clerk, is that correct?

14 A Yes.

15 Q Now, does the applicant or the new employee make out an  
16 employment application?

17 A Yes.

18 Q And does that employment application contain a question ask-  
19 ing for references?

20 A Yes, it does.

21 Q And where does the employment application go?

22 A It goes to our office.

23 Q And do you do anything in connection with references?

24 A Yes, our office people make our request for references from  
25 the previous owners on another form.

1 Q And to the answers come back to the central office?

2 A Come back to our office and they are checked by our people.

3 Q And this is true for all stores?

4 A All employees in all stores.

5 Q Now, if the answer to the references that come back are  
6 derogatory, what is done and who does it?

7 A It's usually called to my attention, and we notify the  
8 manager to dismiss the employee.

9 MR. SHEEHAN: You can inquire.

10 REDIRECT EXAMINATION

11 Q (By Mr. Domesick) Mr. Salmonson, the company purchased  
12 each and every one of the stores it now owns in Connecticut?

13 A No, that's not true.

14 Q How many stores do you own in Connecticut now?

15 A Seven.

16 Q How many were purchased?

17 A Six.

18 Q When was the last time a stockman was made a manager?

19 In Rhode Island.

20 A I believe about three months ago.

21 Q Three months or so?

22 A I don't know, about three.

23 Q Who was that?

24 A May have been Dan -- do you have the payroll list? His  
25 name slips my mind. I think it is De Cristofaro. He went to  
Store 3.

1 Q And Store 3 is in Rhode Island?

2 A Newport, R. I.

3 Q Where was he a stockman?

4 A Store 20.

5 Q And where is that located?

6 A North Main Street, Providence.

7 Q Rhode Island?

8 A Yes.

9 Q Last time before that, can you recall the last time a  
10 stockman was made a manager in Rhode Island?

11 A Well, we had another, Ed Phillipe, came from Fall River  
12 to North Main, became manager. He was transferred from Store 7,  
13 Pleasant Street, Fall River, to Store 20.

14 Q And when was that?

15 A That was -- I think it was, he was made manager I believe  
16 a few months ago.

17 Q What does that mean?

18 A Very recently, two or three months ago. I haven't got the  
19 dates with me. I can get it easy enough.

20 Q Was that one when Mr. Dame became a supervisor?

21 A True.

22 Q And a stockman who was elevated to a manager received a  
23 substantial wage increase?

24 MR. SHEEHAN: Objection.

25 HEARING OFFICER: What's the point?

1 time of the day to do work in that post office and they do.

2 HEARING OFFICER: Are the hours of this postal substation  
3 the same as the hours of that particular store?

4 THE WITNESS: Officially they are, as far as I know.  
5 Sometimes where they may feel that they can get away closing  
6 earlier, I wouldn't know, but they are not suppose to.

7 HEARING OFFICER: But the post office substation is suppose  
8 to be open as long as the store is open?

9 THE WITNESS: That's what the rule says.

10 HEARING OFFICER: Does this help at all?

11 Q (By Mr. Domesick) Now, directing your attention to the  
12 Blue Cross and Physician's Service which were covered, is that  
13 a noncontributory policy for your store employees in these  
14 three states?

15 A It is not ---

16 MR. SHEEHAN: What does he mean by noncontributory?

17 MR. DOMESICK: Let him explain. He is the treasurer of  
18 a multimillion dollar corporation.

19 MR. SHEEHAN: I am going to object to the question. The  
20 word noncontributory is meaningless.

21 HEARING OFFICER: Let's let the witness answer the question.  
22 If he doesn't understand it, he can say so.

23 MR. SHEEHAN: Mr. Rosemere, I don't want <sup>a</sup> question to be  
24 asked and then I have to spend a half an hour clarifying because  
25 the witness did not understand the term noncontributory. This

1 is a term of art.

2 HEARING OFFICER: Do you know what he means?

3 THE WITNESS: I believe that he means whether the  
4 company contributes part of the cost of the Blue Cross.

5 Q (By Mr. Domesick) Just the opposite. I mean the employees.

6 A It means the employees contribute.

7 HEARING OFFICER: I think he understands it, Mr. Sheehan.  
8 This means whether the employees contribute to this plan.

9 Q (By Mr. Domesick) Can you answer that?

10 A It's fully paid for the individual by the company

11 Q Does the individual have an option whether to go into  
12 this plan or not?

13 MR. SHEEHAN: Objection.

14 HEARING OFFICER: Do you understand the question,  
15 Mr. Salmonson?

16 MR. SHEEHAN: Mr. Rosemere, I am still going to object.  
17 How can anybody force an employee to take hospital coverage  
18 if he doesn't want it. I don't care whether it's this company  
19 or any other.

20 THE WITNESS: For nothing?

21 Q (By Mr. Domesick) For nothing, if you have employees  
22 who refuse, you have got odd employees, so I would like to find  
23 out.

24 HEARING OFFICER: I will overrule the objection. Can  
25 you give an answer to that question?



1 THE WITNESS: To my knowledge I believe everybody  
2 accepts something for nothing. If somebody was already covered  
3 by their husband and he was already getting free Blue Cross  
4 for them and they didn't even care to fill out a card, that  
5 I don't know, and I haven't got a record of everybody; we  
6 offered it to everybody free, for themselves.

7 Q (By Mr. Domesick) You testified on the first day of hearing  
8 that employees to be covered by this must work a minimum of  
9 a 38-hour week?

10 A That is right.

11 HEARING OFFICER: Covered by what?

12 MR. DOMESICK: Covered by the Blue Cross and Physician's  
13 Service.

14 Q (By Mr. Domesick) In Store No. 2,, Warwick, R. I., how  
15 many clerks work 38 hours or more?

16 A I don't know.

17 Q At my request at the conclusion of the prior hearing,  
18 did you prepare a list of the employee complement and the  
19 hours of the specific employees in each of the stores in your  
20 chain which are located in Rhode Island?

21 A We have.

22 Q Do you have that list with you?

23 A I believe my attorney has it.

24 Q And does that list indicate whether an employee works  
25 38 hours or more?

1 HEARING OFFICER: So that the record will adequately  
2 reflect what this list covers, does it purport to cover all  
3 the employees in the requested unit?

4 Q (By Mr. Domesick) That would include such people as  
5 fountain men and cosmeticians and subpost office people.

6 A That is right.

7 HEARING OFFICER: I take some exception at this time to  
8 fountain men. I think this was a matter left at the last  
9 session to some explication this time. I have reference to  
10 fountain manager. I don't think we resolved that question.

11 Q (By Mr. Domesick) Let me ask you, does that list include  
12 where appropriate fountain managers?

13 A I believe this includes all the fountain help.

14 Q And in what stores?

15 MR. SHEEHAN: If we can cut this down. It includes all  
16 store personnel with the exception of pharmacists, store  
17 managers and assistant managers.

18 HEARING OFFICER: Does the witness accept that?

19 THE WITNESS: Yes.

20 Q (By Mr. Domesick) And would you tell us by some number  
21 those stores which have fountain managers as distinguished from  
22 fountain help?

23 A The store numbers would be 28, 38, and 40.

24 Q And there would be one fountain manager in each of those  
25 stores?

1 A If there was a fountain manager that week. A fountain  
2 manager is almost the same as a clerk and many times they come  
3 and go the same as all the other clerks. Store 40 at this  
4 particular week may have had no manager.

5 Q They come and go?

6 A Turnover.

7 Q But there is someone -- when there is someone, there is  
8 a fountain manager?

9 A If you want to call him such, yes.

10 HEARING OFFICER: Off the record.

11 (Discussion off the record.)

12 HEARING OFFICER: Back on the record.

13 Mr. Domesick, at this time does the Employer wish to take  
14 an alternative position with respect to an appropriate unit?

15 MR. DOMESICK: I think you mean the petitioner. The  
16 union's position is that the optimum and appropriate unit is  
17 a store-wide unit as described in the petition. Feeling  
18 that strongly, the union is not willing to participate in  
19 a larger unit election. Since there has been no evidence  
20 with respect to a smaller unit, we don't wish to take a position.

21 HEARING OFFICER: The Petitioner still restricts the unit  
22 to a unit in Rhode Island stores, in Rhode Island and  
23 Rhode Island only?

24 MR. DOMESICK: Yes.

25 HEARING OFFICER: The problem is that we have three

1 stores in Connecticut and brings them across the line into  
2 New York and interchanges as it does for Connecticut to  
3 Massachusetts which, evidently, the company says it does.  
4 The company says it is a tri-state unit that is appropriate.  
5 They haven't argued for no unit, a single-store unit, or a  
6 two-state unit, or system-wide unit, but they have produced  
7 very scanty evidence to support a tri-state unit.

8 HEARING OFFICER: Off the record.

9 (Discussion off the record.)

10 HEARING OFFICER: Back on the record.

11 Q (By Mr. Domesick) Do you use the same process in the  
12 inventory control in New York, that is, the taking of employees  
13 from ---

14 A They swoop down in New York like they do in Connecticut.  
15 Incidentally, in Connecticut, they come in from Rhode Island  
16 and take the inventory.

17 Q Now, wehn you perform those functions in New York stores,  
18 do you use or draw upon the pool of employees employed in  
19 Connecticut stores?

20 A No, we don't.

21 Q That state is an exception?

22 MR. SHEEHAN: What state is an exception?

23 MR. DOMESICK: New York.

24 MR. SHEEHAN: Exception to what?

25 MR. DOMESICK: To your prior testimony with respect to

1 bookkeepers. That is why I asked this question. The witness  
2 tells me there are no employees in any stores in that  
3 category.

4 MR. DOMESICK: That of course is with the exception of  
5 the clerical duties performed by the postal clerks.

6 HEARING OFFICER: Pursuant to that question, Mr. Domesick,  
7 I would like to ask you a question pursuant to the testimony.  
8 What are the categories of employees that are sought by the  
9 Petitioner under its term "all employees" in the unit  
10 description. You seek the regular store clerks?

11 MR. DOMESICK: Rank and file store clerks.

12 HEARING OFFICER: Sales girls?

13 MR. DOMESICK: Sales girls, cosmeticians, fountain help,  
14 if they are designated as such, stockmen. I believe that  
15 covers the classifications.

16 HEARING OFFICER: Mr. Salmonson, are any of the employees  
17 of any of the employer's stores in Rhode Island and  
18 Massachusetts or Connecticut currently represented by any  
19 labor organization?

20 THE WITNESS: No.

21 HEARING OFFICER: Have they been in the past?

22 THE WITNESS: To my knowledge, no.

23 HEARING OFFICER: Now, could we ascertain from Petitioner's  
24 Exhibit No. 9 the number of employees in the unit requested  
25 by the Petitioner by totalling these columns for fulltime

BEFORE THE NATIONAL LABOR RELATIONS BOARD

First Region

-----  
In the Matter of:

ADAMS DRUG CO., INC.

and

LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO  
-----

:  
:  
:  
:  
: CASE NO.  
: 1-CA-6084  
:  
:  
:

John F. Kennedy Federal Building  
Room 2007-A  
Boston, Massachusetts

Monday, January 29, 1968

The above-entitled matter came on for hearing, pursuant  
to notice, at 10:00 a.m.

BEFORE:

DAVID S. DAVIDSON, ESQ., Trial Examiner.

APPEARANCES:

GERALD WOLPER, ESQ., John F. Kennedy Federal Building,  
Boston, Massachusetts, appearing  
on behalf of the General Counsel.

STEPHEN R. DOMESICK, ESQ., Angoff, Goldman, Manning &  
and Pyle, 44 School Street, Boston,  
WARREN H. PYLE, ESQ., Massachusetts, appearing on  
behalf of the Charging Party.

WILLIAM J. SHEEHAN, ESQ., Adler, Pollock & Sheehan,  
530 Hospital Trust Building,  
Providence, Rhode Island,  
appearing on behalf of the  
Respondent.

P R O C E E D I N G S

TRIAL EXAMINER DAVIDSON: The hearing will be in order. This is a formal hearing before the National Labor Relations Board in the matter of Adams Drug Co., Inc., 1-CA-6084. The Trial Examiner conducting this hearing is David S. Davidson.

All parties have been informed of the procedures at formal hearings before the Board by service of a statement of standard procedures with the complaint and notice of hearing. Additional copies of this statement are available from the Counsel for the General Counsel upon request.

Will Counsel and other representatives for the parties please state their appearances for the record?

MR. WOLPER: Counsel for General Counsel Gerald Wolper, National Labor Relations Board, Region One, Boston.

MR. SHEEHAN: Adler, Pollock & Sheehan by William J. Sheehan, 530 Hospital Trust Building, Providence, Rhode Island.

MR. DOMESICK: Angoff, Goldman, Manning & Pyle, 44 School Street, Boston, Massachusetts by Stephen R. Domesick and Warren H. Pyle.

TRIAL EXAMINER: Mr. Wolper, are you ready to proceed?

MR. WOLPER: Yes, sir. General Counsel at this time offers into evidence the formal papers which have been marked as General Counsel's Exhibits 1(a) through 1(n), 1(n) being an index of the formal papers. They have been examined by the



1 other parties.

2 TRIAL EXAMINER: Is there any objection?

3 MR. SHEEHAN: I have only one statement to make,  
4 Mr. Davidson. I don't think the papers are complete in that  
5 the Statutes, the Rhode Island Statutes, certified copies  
6 of which were served on the Board as a part of the  
7 Respondent's reply to the order to show cause on summary  
8 judgment, are not part of the formal papers, and I request  
9 that they be made so.

10 TRIAL EXAMINER: Can they be added, Mr. Wolper?

11 MR. WOLPER: I have copies of the Memorandum of  
12 Respondent In Support Of Reply To General Counsel's Motion  
13 For Summary Judgment. They are at this time available.  
14 The Statutes to which this Memorandum refers I do not have  
15 copies of because I thought that possibly the Trial Examiner  
16 could take official notice to the attachments thereto. They  
17 are a sizable document.

18 MR. SHEEHAN: They have been served on all parties,  
19 Mr. Davidson.

20 TRIAL EXAMINER: I believe I saw them in the formal file  
21 in this case, so that I'm sure they are available to me, and  
22 I assume they are something of which I could take judicial  
23 notice in any event. They do not require proof of Statutes.  
24 Do you want to note for the record the particular portions  
25 of the Statutes that were attached? I suspect that will be

1 sufficient.

2 MR. WOLPER: The Statutes referred to by Mr. Sheehan  
3 as attachments to his Memorandum Of Respondent In Support Of  
4 Reply to General Counsel's Motion For Summary Judgment are  
5 as follows: Title 5, Chapter 19, Sections 1 through 37  
6 entitled PHARMACY; Title 21, Chapter 28, Sections 1 through  
7 66 entitled UNIFORM NARCOTIC DRUG ACT; Title 21, Chapter 29,  
8 Sections 1 through 23 entitled BARBITUATES AND HYPNOTIC  
9 DRUGS; Title 21, Chapter 30, Sections 1 through 9 entitled  
10 DRUGS AND POISONS GENERALLY.

11 Now, I do have sufficient copies of the Memorandum if  
12 you'd care to examine them or want to make them part of the  
13 record, I have no objection. This is the Memorandum in  
14 support of the reply. What I do not have are copies of the  
15 Statutes, themselves.

16 TRIAL EXAMINER: The reply, itself, is included in the  
17 formal papers, but not the Memorandum.

18 MR. WOLPER: That's right..

19 TRIAL EXAMINER: Did you wish to have the Memorandum  
20 received also?

21 MR. SHEEHAN: Yes.

22 MR. WOLPER: This also, I might add, should be part of  
23 the formal file that these appear in also. General Counsel  
24 offers into evidence what has been marked as General Counsel's  
25 Exhibit 1(o) titled MEMORANDUM OF RESPONDENT IN SUPPORT OF

1 REPLY TO GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT.

2 TRIAL EXAMINER: I take it then there is no objection  
3 to the receipt of the exhibits as have now been explained  
4 and amended.

5 MR. SHEEHAN: There is none.

6 TRIAL EXAMINER: General Counsel's Exhibits 1(a)  
7 through 1(o) are received.

8 (General Counsel's Exhibits 1(a)  
9 through 1(o) were marked for  
10 identification and were  
11 received into evidence.)

12 MR. WOLPER: General Counsel moves to amend the charge,  
13 the complaint and other formal papers which incorrectly  
14 cite the name of the company. The official name of the  
15 company is Adams Drug Co., Inc. General Counsel moves to  
16 amend all formal papers to so correctly reflect the name  
17 where it is not correctly reflected. In some of the  
18 documents the name of the company appears as Adams Drug  
19 Company with "Company" spelled out, and in others it appears  
20 with the correct name.

21 TRIAL EXAMINER: Any objection to the motion to amend?

22 MR. SHEEHAN: No, I do not.

23 TRIAL EXAMINER: The motion is granted.

24 MR. WOLPER: General Counsel also requests the Trial  
25 Examiner to take official notice of the representation  
proceedings in 1-RC-8949 involving Adams Drug Co., Inc.

1 TRIAL EXAMINER: I think it would be proper for me to  
2 do so, and I will.

3 MR. WOLPER: General Counsel rests.

4 TRIAL EXAMINER: Does Charging Party have anything to  
5 offer at this point?

6 MR. DOMESICK: Not at this time, Mr. Examiner.

7 MR. SHEEHAN: Mr. Examiner, I think the first thing  
8 I'd like to do is make a motion to continue this hearing  
9 before the Respondent proceeds with his case.

10 By certified mail on January 2, 1968 the Respondent  
11 served a subpoena duces tecum on Arthur Sousa, Secretary-  
12 Treasurer of the Charging Party. That subpoena called for  
13 the production of certain documents at this hearing. On  
14 January 9, 1968 insofar as I am advised by the date on the  
15 motion to revoke the subpoena duces tecum filed by Counsel  
16 for the Charging Party, the motion states, "Now comes  
17 Arthur Sousa with a petition for revocation of the subpoena  
18 duces tecum served upon him at the request of William J.  
19 Sheehan, attorney for Adams Drug Company by his attorney,  
20 Angoff, Goldman, Manning & Pyle, Warren H. Pyle.

21 On January 26 at approximately noon time -- that is  
22 last Friday -- I was handed a wire over the Teletex over the  
23 signature of Charles W. Schneider, Associate Chief Trial  
24 Examiner, which reads, "Re: Adams Drug Company, Case No.  
25 1-CA-6084. Motion to revoke subpoena duces tecum No. B73531

1 has been filed by the Union. No opposition has been received.  
2 The subpoena is hereby revoked. The materials and  
3 information sought by the subpoena appear to relate solely  
4 to objections raised in the representation proceeding  
5 and finally decided therein. No claim is made that this  
6 evidence was previously unavailable or was newly discovered.  
7 Under these circumstances the materials sought are not  
8 relevant to any matters under investigation. Charles W.  
9 Schneider."

10 Obviously we had one course of action at Friday  
11 noon time and that was to file a request for review. That  
12 request was filed -- telegraphic request -- and states,  
13 "Employer served with a motion by Charging Party to revoke  
14 subpoena duces tecum served upon officer of Charging Party.  
15 Motion stated no grounds for revocation. Trial Examiner  
16 issued no order to show cause why subpoena should not be  
17 revoked. On state of record motion was in order for argument  
18 at the opening of the hearing before the Trial Examiner or  
19 when witness called. Trial Examiner revoked subpoena on  
20 grounds material sought relates solely to objections in  
21 representation proceedings and no claim made that evidence  
22 previously unavailable or newly discovered. Apparently  
23 Trial Examiner makes this ruling on lack of opposition to  
24 motion. Motion could not be opposed at this time since no  
25 grounds stated therein to oppose. Trial Examiner is assuming

1 use of subpoenaed material and making legal conclusion on  
2 his assumption that it cannot be used. Claim has been made  
3 throughout representation proceedings and pleadings in this  
4 instance. See for example request for review in representation  
5 proceedings that contractual information sought in subpoena  
6 was only partially available to Employer at time objections  
7 made and investigated. No hearing ever afforded Employer  
8 on objections. Request review be permitted of Trial  
9 Examiner's ruling revoking subpoena duces tecum. Copies of  
10 this telegram to Counsel for General Counsel and Charging  
11 Party this date. Adams Drug Co., Inc. by its attorney,  
12 Adler, Pollock & Sheehan."

13 In view of that state of the record, Mr. Trial Examiner,  
14 I move that the hearing be continued until the Board has  
15 acted upon the request for review.

16 TRIAL EXAMINER: Mr. Sheehan, the matter requested in  
17 your subpoena -- may I ask you does it go to the matters  
18 raised in the objections to the election in the representation  
19 case?

20 MR. SHEEHAN: Yes, it does.

21 TRIAL EXAMINER: Relating to alleged misrepresentations  
22 made in literature or other communications from the Union to  
23 the employees?

24 MR. SHEEHAN: It does.

25 TRIAL EXAMINER: Well, I am inclined to believe that

1 Retail Clerks; what has been marked as R-2, motion to revoke  
2 subpoena duces tecum filed by the Charging Party; what has  
3 been marked R-3, the telegraphic granting of the motion to  
4 revoke subpoena duces tecum by Charles W. Schneider,  
5 Associate Chief Counsel; what has been marked as R-4, the  
6 Employer's request for review of the revocation of the  
7 subpoena by the Chief Trial Examiner.

8 TRIAL EXAMINER: Is there any objection?

9 MR. DOMESICK: None for the Charging Party.

10 MR. WOLPER: I have no objection.

11 TRIAL EXAMINER: Respondent's Exhibits 1 through 4 are  
12 received.

13 (Respondent's Exhibits 1 through  
14 4 were marked for identification  
and were received in evidence.)

15 MR. SHEEHAN: Mr. Trial Examiner, I'd like to offer  
16 at this time a certified copy by the Secretary of State  
17 of a Statute referred to in the Employer's reply to the order  
18 to show cause why summary judgment should not be granted.  
19 Now, this statute was not appended to the Respondent's  
20 supporting brief, and that is titled Title 21, Chapter 31  
21 entitled the Rhode Island Food, Drugs and Cosmetics Act.  
22 That has been marked Respondent's 5, Mr. Trial Examiner, and  
23 commences on the second page.

24 TRIAL EXAMINER: Is there any objection? Hearing none I  
25 will receive Respondent's Exhibit 5.



(Respondent's Exhibit No. 5 was marked for identification and was received into evidence.)

MR. SHEEHAN: Mr. Trial Examiner, in the Board's decision in the representation case there was a reference to a Standard Metropolitan Statistical Areas publication, and it referred to the 1964 edition. Both Counsel for the General Counsel and I, or at least I -- and I believe he did also -- attempted to obtain a copy of that Standard Metropolitan Statistical Areas compilation. I learned that it was out of print, and I believe the General Counsel learned the same thing. We also learned that a new edition had been published, the so-called 1967 edition, which merely updated the 1964 edition and also noted in the 1967 edition where the changes had occurred after the 1964 edition. So, it is possible by looking at this publication to determine what was in the 1964 publication because every change is noted. And I believe General Counsel was in agreement that this may be made a part of the record, and I have had it marked Respondent's 6.

MR. WOLPER: I have one minor point. I believe that the Board referred to the Standard Metropolitan Statistical Areas book 1964 edition as amended May 24, 1966, and that was the one that was out of print, and this is as amended May 1st, 1967. Also, beginning on Page 45 of this book is listed the changes in the standard metropolitan areas from 1950 through

1 anything less than a genius. I just want our position on  
2 the record.

3 Whereupon,

4 CHARLES SALMANSON

5 was called as a witness by and on behalf of the Respondent,  
6 and, having been first duly sworn, was examined and  
7 testified as follows:

8 DIRECT EXAMINATION

9 Q (By Mr. Sheehan) Would you state your full name and  
10 address, please?

11 A Charles Salmanson, S-a-l-m-a-n-s-o-n, 284 Slater Avenue,  
12 Providence.

13 Q And are you an officer of the Employer?

14 A I am the treasurer.

15 Q And how long have you held that office?

16 A About thirty-three years.

17 Q And do you have a specific function in relation to the  
18 stores, themselves?

19 A Yes, I am director of store operations.

20 Q Referring only to stores in Rhode Island, Mr. Salmanson,  
21 do you recall the approximate date when Store No. 22 was  
22 opened?

23 A November, 1966.

24 Q Where is Store No. 22 located?

25 A Middletown, Rhode Island.

1 Q And do you have a store now operating in Westerly,  
2 Rhode Island?

3 A Yes, we do.

4 Q And when was that opened?

5 A Westerly, Rhode Island? I believe it was December of  
6 '66.

7 Q And do you have a store in Attleboro, Rhode Island?

8 A Massachusetts.

9 Q Massachusetts. Excuse me.

10 A You are referring to ----

11 Q The one that was opened at the time of the election.  
12 Did you have one opened then?

13 A Yes, we did.

14 Q What's that store number?

15 A Store No. 6.

16 Q Did the employees in the Westerly store and the  
17 Middletown, Rhode Island store vote in the election?

18 A Yes, they did.

19 Q Do you have a store in Wakefield, Rhode Island?

20 A Yes, we do.

21 Q And what's the number of that store?

22 A No. 16.

23 Q Is that or was that opened at the time of the election?

24 A That was, yes.

25 Q Did the employees in that store vote in the election?

1 Q Did the employees in the Attleboro store vote in the  
2 election?

3 A No, they did not.

4 TRIAL EXAMINER: And they were working at the time of  
5 the election?

6 THE WITNESS: They were.

7 Q Now, Mr. Salmanson, I'm going to show you, after the  
8 Counsel have had a chance to inspect it, a Rhode Island  
9 highway map which is an official map of the State of Rhode  
10 Island.

11 TRIAL EXAMINER: Are you going to introduce the map  
12 in evidence?

13 MR. SHEEHAN: I have no objection to putting it in. I  
14 just want to get some testimony on distances, and I  
15 certainly am willing to put the map in.

16 MR. DOMESICK: Does the map bear a scale?

17 MR. SHEEHAN: Yes, the map has a scale.

18 MR. DOMESICK: We can go by what the map says.

19 TRIAL EXAMINER: It might help to mark it.

20 MR. SHEEHAN: I will offer at this time, Mr. Trial  
21 Examiner, if there is no objection, R-7 which is an  
22 official highway map of the State of Rhode Island.

23 MR. DOMESICK: Was this unavailable to Counsel during  
24 the representation proceeding?

25 MR. SHEEHAN: This was not unavailable to Counsel.

1 the Attleboro store not being included in the unit found  
2 to be appropriate.

3 MR. DOMESICK: I would join in that objection for  
4 those reasons and in addition ----

5 TRIAL EXAMINER: Mr. Sheehan, I will read the record  
6 in the representation case. Off the record.

7 (Discussion off the record.)

8 TRIAL EXAMINER: On the record. The objection is  
9 overruled. Read the question.

10 (The pending question was read back.)

11 A It's six miles approximately.

12 Q Now, how far is the Attleboro store from the nearest  
13 store in the State of Rhode Island?

14 A Well, we have another Attleboro store, so I'm just  
15 trying to ----

16 Q Is that store to be opened ----

17 A Within a few weeks.

18 Q All right. That store presently isn't opened?

19 A That's right.

20 Q Now, address your remarks to the Attleboro store that  
21 is opened and was opened at the time of the election. Where  
22 is the nearest store in Rhode Island to that one?

23 A Well, we have one in Central Avenue, Pawtucket which  
24 would be about four miles.

25 Q That is Store No. 33?

1 A Correct.

2 Q What is the next one?

3 A We have one in Cumberland, Store No. 30, which would be  
4 about seven miles.

5 TRIAL EXAMINER: Can those be located on the map?

6 Q Would you locate the Central Avenue, Pawtucket store,  
7 Store No. 33, first?

8 A That would be C-8.

9 Q And now Store No. 30 in Cumberland?

10 A That would be B-7.

11 Q B-7 -- is that on a particular highway shown on the  
12 map?

13 A It's on Manville Road. I believe it's 122 here. Excuse  
14 me. Mendon Road.

15 Q Is there a store in Central Falls, Rhode Island?

16 A Yes, we have one. It's Store No. 4.

17 Q How far is that from the Attleboro store?

18 A That would be approximately five miles.

19 Q Can you coordinate the Central Falls store?

20 A That would be C-7 1/2.

21 Q And do you have a store in Saylesville, Rhode Island?

22 A Yes, it's Store No. 37.

23 Q And how far is that from the Attleboro store?

24 A That would be about six miles.

25 Q Can you coordinate that on the map?

1 A That would be C-7 1/2.

2 Q Now, going over to Massachusetts, now, Mr. Salmanson,  
3 what is the store in Massachusetts that is closest to the  
4 Attleboro store?

5 A That would be probably Somerset.

6 Q And approximately how far from Attleboro is Somerset?

7 A I'd say it would be about ten miles probably.

8 Q About ten miles?

9 A Yes.

10 Q You have coordinated these before.

11 MR. DOMESICK: Mr. Sheehan, could you establish for us  
12 at this point in the record whether Mr. Salmanson's  
13 estimation of the mileage is based on his own knowledge or  
14 based on the map, itself?

15 MR. SHEEHAN: They are based on the map.

16 Q Mr. Salmanson, have you been over this map prior to the  
17 hearing in an attempt to come to a conclusion as best you can  
18 as to distances shown on the map between the stores to which  
19 you have testified?

20 A Yes. I used the scale of miles on the map and a ruler,  
21 and I arrived at a fairly close distance.

22 Q Those are straight line distances that you are referring  
23 to?

24 A That's right.

25 MR. SHEEHAN: You may inquire.



## CROSS EXAMINATION

Q (By Mr. Wolper) Mr. Salmanson, I have just a couple of questions for you, sir. Could you tell me when Store No. 37 in Saylesville, Rhode Island was opened?

A That store was purchased I would say about probably four years ago.

Q In other words it was open at the time of the election?

A Yes.

Q Is Saylesville near Lincoln?

A Yes, it borders Lincoln.

MR. WOLPER: May we go off the record?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. WOLPER: General Counsel proposes to stipulate that Store No. 37 located as Mr. Salmanson has testified in Saylesville, Rhode Island is the same Store No. 37 in which the election was conducted on June 9th and 10th, 1967. Store No. 37 in the election notice is listed as being located in Lincoln, Rhode Island. General Counsel would stipulate that Saylesville, Rhode Island is a part of Lincoln, Rhode Island.

MR. SHEEHAN: So stipulated.

MR. DOMESICK: So stipulated.

Q (By Mr. Wolper) At the time of the representation

1 hearing did the Company operate stores in Middletown and  
2 Westerly?

3 A I'm sorry?

4 Q At the time of the representation hearing which was  
5 held on May 11th and May 26th, 1966 did the Company operate  
6 any stores in Middletown or Westerly, Rhode Island?

7 A Well, I think I stated that those stores were opened  
8 in November and December of '66.

9 Q And the Company did not operate any other stores in  
10 those two cities prior to that time?

11 A That is right.

12 Q Therefore, they were not opened at the time of the  
13 hearing.

14 A They were open at the time of the election, but I don't  
15 remember when the hearing was. That was the dates when they  
16 were opened.

17 Q Well, in order to fill ----

18 MR. WOLPER: Can we stipulate ----

19 MR. SHEEHAN: We can stipulate that the Middletown,  
20 Rhode Island store and the Westerly, Rhode Island store to  
21 which Mr. Salmanson has testified are operated by the  
22 Company were opened at the time of the election but were not  
23 open at the time of the hearing.

24 MR. WOLPER: So stipulated.

25 MR. DOMESICK: May we have a short recess?

1 TRIAL EXAMINER: Off the record.

2 (Discussion off the record.)

3 TRIAL EXAMINER: On the record.

4 MR. DOMESICK: Charging Party is prepared to stipulate  
5 to that.

6 Q (By Mr. Wolper) Does this Store No. 6, Mr. Salmanson,  
7 which you have testified to in Attleboro, was that open  
8 at the time of the hearing?

9 A Yes, it was.

10 Q Was the Tiverton, Rhode Island store open at the time  
11 of the hearing?

12 A No, it was not.

13 MR. SHEEHAN: Tiverton now; not Middletown.

14 Q And what Store Number is that?

15 A Tiverton is 25.

16 Q When was that store opened?

17 A That store was opened just a few months ago.

18 Q Has it been open since the election?

19 A No, it was opened after the election.

20 Q It was opened after the election?

21 A Yes.

22 Q I'm sorry, I didn't hear your answer.

23 A Yes.

24 MR. SHEEHAN: May we go off the record?

25 TRIAL EXAMINER: Off the record.

1 (Discussion off the record.)

2 Q What's the store number of Bristol?

3 A Twenty-one.

4 Q And when was that store opened?

5 A It was opened in June, I believe.

6 Q Was it opened at the time of the election?

7 A Well, it was opened in June, and I don't know the exact  
8 date of the election.

9 MR. DOMESICK: Perhaps we can get a stipulation that  
10 the employees in the Bristol, Rhode Island store did not  
11 vote in the election because the store wasn't opened at that  
12 time.

13 Q May I refresh your recollection? The election was held  
14 on June 9th and 10th of 1967. Could you tell us ----

15 A June what?

16 Q 9th and 10th.

17 A Well, I don't have the exact day. I know it was opened  
18 in June; so, if it was opened after the election, it should  
19 be on the record somewhere. I don't have it in front of me.

20 TRIAL EXAMINER: Off the record.

21 (Discussion off the record.)

22 TRIAL EXAMINER: On the record.

23 MR. WOLPER: General Counsel proposes a stipulation that  
24 the Store No. 21 located in Bristol, Rhode Island was not  
25 opened at the time of the election held on June 9th and 10th

1 of 1967, but was opened some time during the month of  
2 June of '67.

3 MR. DOMESICK: Charging Party so stipulates.

4 MR. SHEEHAN: No objection.

5 TRIAL EXAMINER: Do you so stipulate?

6 MR. SHEEHAN: I do so stipulate.

7 TRIAL EXAMINER: Do I understand correctly that the  
8 employees at the Middletown and Westerly stores did vote  
9 in the election?

10 MR. WOLPER: Yes, sir, they did.

11 TRIAL EXAMINER: I take it there is no dispute as to  
12 that.

13 MR. SHEEHAN: That is correct.

14 MR. WOLPER: I have no further questions.

15 CROSS EXAMINATION

16 Q (By Mr. Domesick) Mr. Salmanson, the West Warwick  
17 or Arctic store was just recently opened?

18 A Correct.

19 Q And those employees did not vote in the election?

20 A Correct.

21 MR. DOMESICK: I have no other questions. Thank you.

22 REDIRECT EXAMINATION

23 Q (By Mr. Sheehan) Mr. Salmanson, when did the  
24 Middletown store open?

25 A Middletown was opened in November of '66.

1 Q And when did the Westerly, Rhode Island store open?

2 A It was December of '66.

3 MR. WOLPER: May we go off the record?

4 TRIAL EXAMINER: Off the record.

5 (Discussion off the record.)

6 TRIAL EXAMINER: On the record.

7 Q Mr. Salmanson, referring now to Respondent's 7, you have  
8 already coordinated these two places on the map in your  
9 previous testimony. Approximately how far is the Middletown  
10 store from the Warren, Rhode Island store?

11 MR. PYLE: Doesn't the map speak for itself on that?

12 TRIAL EXAMINER: I would think that it would if both  
13 have previously been located. That can be determined from  
14 the map.

15 A Well, it appears to be ----

16 MR. PYLE: I object.

17 A Fifteen miles.

18 MR. PYLE: I object. He's just looking at the map.

19 trial EXAMINER: I take it these are distances that  
20 you have not previously checked.

21 THE WITNESS: Right.

22 TRIAL EXAMINER: I can determine that from the map, I  
23 believe.

24 MR. SHEEHAN: I have no further questions of  
25 Mr. Salmanson.

1 Q Is that a full-time occupation?

2 A Yes, it is.

3 MR. SHEEHAN: I would move that I be permitted to  
4 question the witness under 43(b), Mr. Trial Examiner.

5 MR. PYLE: Objection.

6 TRIAL EXAMINER: Proceed and put your questions; and  
7 at such point as I have to resolve this, I will.

8 Q How many contracts did the Charging Party have in effect  
9 with employers in June of 1967, Mr. Sousa?

10 MR. PYLE: Objection, Your Honor. This is beyond the  
11 scope of this hearing.

12 TRIAL EXAMINER: Mr. Sheehan, what is the issue to which  
13 this question goes?

14 MR. SHEEHAN: The issue very frankly is that the  
15 objections the employer filed to the election, on the basis  
16 of misrepresentations.

17 TRIAL EXAMINER: This is a matter covered in the  
18 Regional Director's report on objections?

19 MR. SHEEHAN: It is.

20 TRIAL EXAMINER: I will sustain the objection.

21 Q Did you have a contract, Mr. Sousa, in June of 1967 with  
22 the other local unions of the Retail Clerks International  
23 Association with Stop & Shop, a retail supermarket company?

24 MR. PYLE: Objection, same grounds.

25 TRIAL EXAMINER: Is it for the same purpose?



1 MR. SHEEHAN: It is.

2 TRIAL EXAMINER: Sustained.

3 Q Did you have a contract with Arlan's Department Store  
4 which has operations in both New Bedford and Fall River,  
5 Massachusetts?

6 MR. PYLE: Objection, same grounds.

7 TRIAL EXAMINER: Same purpose?

8 MR. SHEEHAN: Yes.

9 TRIAL EXAMINER: Sustained.

10 Q Did you have any other contracts with employers in  
11 addition to -- and when I say you, Mr. Sousa, I mean the  
12 Charging Party -- in addition to Stop & Shop, Inc. and  
13 Arlan's, Inc.?

14 MR. PYLE: Objection.

15 MR. WOLPER: Objection.

16 TRIAL EXAMINER: Same purpose?

17 MR. SHEEHAN: Yes.

18 TRIAL EXAMINER: Sustained..

19 Q Mr. Sousa, I show you a Zeroxed copy ----

20 A Excuse me just one minute, but I'll have to have my  
21 glasses.

22 Q I show you two Union flyers bearing the notation Retail  
23 Clerks Union Local Number 1325 which are part of the  
24 General Counsel's Exhibit 1(c) ----

25 MR. WOLPER: I object, Mr. Trial Examiner. I don't see

1 the relevancy of question Mr. Sousa on these points.

2 TRIAL EXAMINER: The question wasn't completed.

3 MR. WOLPER: I'm sorry.

4 TRIAL EXAMINER: Finish the question and then I  
5 suspect I will sustain the objection.

6 MR. WOLPER: I thought you had finished.

7 Q I don't know whether I established this yet, Mr. Sousa,  
8 but did you hold the position of secretary-treasurer of the  
9 Charging Party all through the months of May and June of  
10 1967?

11 A Yes, I did.

12 Q And were these two flyers passed out or mailed or both  
13 by the Charging Party as a part of the election campaign  
14 amongst the Respondent's employees?

15 MR. PYLE: Same objection.

16 MR. WOLPER: Now I will place my objection.

17 TRIAL EXAMINER: Sustained.

18 MR. SHEEHAN: I addressed a question to Mr. Sousa in  
19 reference to Arlan's Department Store, and just for the  
20 record I'd like to put the correct name in. It's Arlan's  
21 Department Store of New Bedford, Inc. I have no further  
22 questions of this witness.

23 MR. PYLE: No questions.

24 MR. WOLPER: No questions.

25 TRIAL EXAMINER: You are excused.

1 MR. SHEEHAN: I have no further witnesses,  
2 Mr. Trial Examiner.

3 TRIAL EXAMINER: I take it you rest.

4 MR. SHEEHAN: Yes.

5 MR. PYLE: May I have just a brief recess?

6 TRIAL EXAMINER: Yes, sir, you may.

7 (Short recess.)

8 TRIAL EXAMINER: On the record. Mr. Salmanson has been  
9 recalled to the stand.

10 Whereupon,

11 CHARLES SALMANSON

12 was recalled to the stand, and, having been previously duly  
13 sworn, was examined further and further testified as  
14 follows:

15 RECROSS EXAMINATION

16 Q (By Mr. Wolper) Mr. Salmanson, could you tell us how  
17 many employees there are employed in the Employer's  
18 Westerly, Rhode Island and Middletown, Rhode Island stores?

19 MR. PYLE: As of the time of the election?

20 Q As of the time of the election.

21 A I don't know exactly. I could estimate the figure. We  
22 probably had maybe twelve in Middletown including part-timers  
23 and maybe eight in Westerly; but this is purely an estimation.

24 Q And how many employees did you have in the Wakefield  
25 store at the time of the election?

1 A Probably twelve.

2 MR. WOLPER: I have nothing further.

3 MR. PYLE: Can we agree those were approximately the same  
4 numbers in those stores as of the time of the hearing in  
5 the representation case?

6 MR. SHEEHAN: Not in those stores. Middletown and  
7 Westerly were not opened at the time of the hearing.

8 MR. WOLPER: Middletown and Westerly were not.

9 MR. PYLE: Can we agree the Wakefield store had about  
10 twelve people at the time of the representation hearing?

11 THE WITNESS: I'm only guessing at these figures.

12 MR. PYLE: Is that your best guess?

13 MR. SHEEHAN: The question, Mr. Salmanson, is this.  
14 At the time of the hearing were there approximately the same  
15 number of employees in the Wakefield store as there were at  
16 the time of the election.

17 THE WITNESS: I would say so, yes.

18 MR. PYLE: Thank you. No other questions.

19 MR. WOLPER: I have nothing further.

20 TRIAL EXAMINER: You are excused.

21 (Witness excused.)

22 TRIAL EXAMINER: Do you have anything else, Mr. Wolper?

23 MR. WOLPER: Nothing.

24 MR. PYLE: Nothing else.

25 TRIAL EXAMINER: Does anyone wish to argue orally at this

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

\*\*\*\*\*

In the Matter of

ADAMS DRUG COMPANY

and

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION, AFL-CIO

\*\*\*\*\*

CASE NO. 1-CA-6084

MOTION FOR SUMMARY JUDGMENT

Comes now Joel I. Keiler, Counsel for the General Counsel of the National Labor Relations Board, and pursuant to Section 102.24 of the Board's Rules and Regulations, Series 8, as amended, files this Motion for Summary Judgment and, in support of said Motion, states the following:

1. On May 12, 1967, the National Labor Relations Board, hereinafter called the Board, issued its Decision on Review and Direction of Election in Case No. 1-RC-8949 finding that the following employees of Adams Drug Company, hereinafter called Respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

"All full-time and regular part-time employees employed at Employer's drug stores located in the State of Rhode Island, including post office sub-station employees, but excluding pharmacists, store managers, and assistant managers, guards and all other supervisors as defined in the Act."

A copy of said Decision on Review and Direction of Election is attached hereto and marked Exhibit A.

2. Thereafter, on June 9, 1967 and June 10, 1967, employees of the Respondent in the unit described above in Paragraph 1 above, by secret ballot election conducted under the direction of the Regional Director for the First Region, acting as Agent of the Board, voted to determine whether Local 1325, Retail Clerks International Association, AFL-CIO, hereinafter called Union, was to be selected as their representative for the purposes of collective bargaining with Respondent.

A copy of the Tally of Ballots cast at said election showing inter alia, 137 votes cast for the Union and 105 cast against the Union with 26 challenged ballots is attached hereto as Exhibit B.

3. On June 16, 1967, the Employer filed timely Objections to Conduct Affecting Results of an Election alleging:

a. The Union represented to the employees of the Employer falsely that all its members were covered by the health and welfare plan set out in Exhibit 1 attached hereto and made a part hereof by mailing a copy of the same to substantially all such employees at a time when the Employer could not make an effective reply thereto.

b. The Union represented to the employees of the Employer as set out in Exhibit 1 that they could enjoy membership in the Union, which would include, the health and welfare plan to which reference is made in Objection #1 without any cost to them until or unless the Union obtained a wage increase greater than the amount of dues it charges.

c. The Union represented to the employees of the Employer that they could have all of the advantages of membership in the Union without charge to the employees of the Employer until and unless the Union secured a wage increase for the employees which was greater than the dues it charged as set out in Exhibit 1.

d. The Union represented falsely that all employees represented by it get paid for ten (10) holidays each year, that all employees get six (6) weeks' full pay for sick leave as set out in Exhibit 2 attached hereto and made a part hereof which was mailed to substantially all employees of the Employer.

4. On July 18, 1967, the Acting Regional Director of Region One issued his Decision on Objections and Certification of Representative.

A copy is attached hereto marked as Exhibit C.

5. On July 26, 1967, the Employer filed Exceptions to the Decision on Objections and Certification of Representative.

A copy is attached hereto marked as Exhibit D.

6. On September 13, 1967, the Board denied Respondent's Request for Review of the Decision of Objections and Certification of Representative.

A copy of the denial is attached hereto marked as Exhibit E.

7. At all times since June 10, 1967 and continuing to date, the Union has been the representative for the purposes of collective bargaining of a majority of employees in said unit and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

8. Commencing on or about September 11, 1967 and continuing to date, the Union requested and is requesting that Respondent bargain collectively with it with respect to rates of pay, wages, hours of employment and other conditions of employment of the employees in the unit described above.

9. Commencing on or about September 19, 1967 and continuing to date, Respondent has refused and continues to refuse to meet with and bargain directly with the Union as their exclusive collective bargaining representative of the employees in the said unit.

10. On October 5, 1967 the Regional Director for the First Region acting on behalf of the Board issued a Complaint and Notice of Hearing in the matter alleging that Respondent violated and is violating Sections 8(a)(1) and (5) of the Act.

A copy is attached hereto marked as Exhibit F.

11. On October 13, 1967, Respondent filed its Answer to the aforesaid Complaint admitting the factual allegations set forth in Paragraphs 2, 3, 4, 6, 7 and 8.

A copy is attached hereto marked as Exhibit G.

12. In its Answer mentioned in Paragraph 11 above, the Respondent denies the allegations of Paragraph 5 of the Complaint that the unit set forth



therein constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 5(b) of the Act.

13. In its Answer referred to in Paragraph 11 above, Respondent admitted the factual allegations contained in Paragraph 6 of said Complaint but reiterated its objections to conduct affecting results of election and states that said objections were denied and dismissed without affording a hearing thereon to the Respondent.

14. In its Answer mentioned in Paragraph 11 above, the Respondent by Paragraph 6 of said Answer denies that it has engaged in any conduct in violation of the National Labor Relations Act as amended.

15. The Board and the courts have consistently held that issues raised and determined by the Board in a prior representation case cannot be relitigated in a subsequent unfair labor practice proceeding arising out of an employer's and/or labor organization's attempt to challenge the Board's findings in this regard. Pittsburgh Plate Glass Co., vs. N.L.R.B., 313 U.S. 146; Metropolitan Life Insurance Co., 142 NLRB 491; Metropolitan Life Insurance Co., 141 NLRB 1074; Metropolitan Life Insurance Co., 141 NLRB 337. These cases apply where, as here, Respondent does not contend that there is newly discovered evidence since the Board's certification or evidence unavailable at the time of the representation proceeding, but contends only that the Board's unit determination and its determination as to the validity of the election was erroneous. Therefore, the Trial Examiner is bound by the Board's determination of those questions,

WHEREFORE, Counsel for the General Counsel respectfully moves:

1. That the Trial Examiner find that a majority of the employees in the unit described in Paragraph 1, by a valid, secret ballot election conducted under the supervision of the Regional Director for the First Region for the Board, designated or selected the Union as their representative for the purposes of collective bargaining and that at all times since said election on June 9, 1967 and June 10, 1967 the Union has been the exclusive representative for the purposes of collective bargaining of a majority of the employees in the said unit;

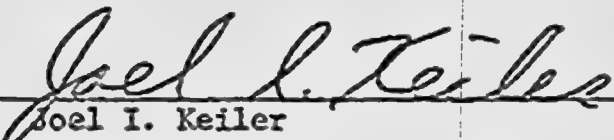
2. That on or about September 19, 1967 and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Union as their exclusive representative of all the employees in the unit described above in Paragraph 1;

3. That all other material allegations in the Complaint which Respondent has in effect admitted in its Answer be deemed to be admitted to be true;

4. That Respondent be found by the Trial Examiner to have violated Sections 8(a)(1) and (5) of the Act without the taking of evidence in support of the allegations of the Complaint, and;

5. That this Motion be ruled upon immediately so that, in the event the Motion is granted, the necessity for hearing will be eliminated and the hearing cancelled.

Respectfully submitted,

  
Joel I. Keiler  
Counsel for the General Counsel  
National Labor Relations Board  
First Region  
Boston, Massachusetts

Dated at Boston, Massachusetts  
this 18th day of October, 1967.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

ADAMS DRUG COMPANY

and

LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO

Case No. 1-CA-6084

copy of MOTION FOR SUMMARY JUDGMENT AND ORDER  
AFFIDAVIT OF SERVICE OF ~~DEFERRING MOTION TO THE TRIAL EXAMINED~~

DATE OF MAILING October 18, 1967

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered/certified mail upon the following persons, addressed to them at the following addresses:

Adams Drug Company  
75 Sabin Street  
Pawtucket, Rhode Island  
(Cert. #614502 - ser. eff. -

William J. Sheehan, Esquire  
Adler, Pollock & Sheehan  
530 Hospital Trust Building  
Providence, Rhode Island 02903  
(Cert. #614503 - ser. eff. -

Local 1325, Retail Clerks International  
Association, AFL-CIO  
175 Bedford Street  
Fall River, Massachusetts  
(Cert. #614504 - ser. eff. -

Warren H. Pyle, Esquire  
Angoff, Goldman, Manning & Pyle  
44 School Street  
Boston, Massachusetts  
(Cert. #614505 - ser. eff. -

Subscribed and sworn to before me

this 18th day of October, 1967

/s/ Ruth Solomon  
Ruth Solomon Designated Agent

/s/ Ann Videtta  
Ann Videtta

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

*Exhibit A*

ADAMS DRUG CO., INC.

Employer

and

Case No. 1-RC-8949

LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO

Petitioner

DECISION ON REVIEW AND DIRECTION OF ELECTION

On June 16, 1966, the Regional Director for Region 1 issued a Decision and Order in the above-entitled proceeding, in which he found that the requested unit of the Employer's retail drug stores confined to the State of Rhode Island was too narrow in scope to be appropriate. As the Petitioner disclaimed interest in any other unit, the Regional Director dismissed the petition. Thereafter, pursuant to National Labor Relations Board Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's Decision, contending that he departed from Board policy in finding the requested unit inappropriate. The Employer filed opposition to the request for review. Retail Clerks International Association filed a telegraphic request for permission to file an amicus curiae statement in support of the request for review.

By telegraphic Order dated September 13, 1966, the National Labor Relations Board granted the request for review. Thereafter, the Petitioner timely filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the entire record in this case, including the briefs of the parties, and makes the following findings of fact:

The Petitioner requested a unit of all full-time and regular part-time store clerks, including sales girls, cosmeticians, fountain help, and stockmen, employed at the Employer's 25 retail drug stores located in the State of Rhode Island. The Employer contended that a chain-wide unit is appropriate and, in the alternative, that the smallest area unit for the employees sought must encompass similar employees at its stores in Massachusetts and Connecticut. The Regional Director concluded that the requested unit was inappropriate as the Rhode Island stores did not comprise a complete geographic or administrative division of the Employer's operations.

In its brief on review, the Petitioner concedes that there may be other groupings of the Employer's stores for unit purposes, but contends that its requested State-wide grouping is also appropriate. In support of its contention, the Petitioner relies principally on the fact that the State of Rhode Island regulates almost every phase of drug stores' operations within its jurisdiction, and on other evidence that the employees within the State share a community of interest. The amicus asserts that a State-wide unit "is a traditional appropriate unit in the retail as well as other industries". We find merit in the Petitioner's contention.

The Employer operates a chain of 23 drug stores in Rhode Island, Massachusetts, Connecticut, New York, Kansas, and Oklahoma. Its central office and warehouse are in Pawtucket, Rhode Island. The stores are operated either directly by the Employer or by wholly owned subsidiaries of the Employer. <sup>1/</sup> There are 25 drug stores in Rhode Island, <sup>2/</sup> all but one of which operate under the Adams Drug Store trade name, <sup>3/</sup> and all are in the <sup>4/</sup> Providence-Pawtucket-Warwick metropolitan area. The Employer has 12 stores

- <sup>1/</sup> The Employer directly operates the central office and warehouse and 6 of the Rhode Island stores.
- <sup>2/</sup> Certain food products are sold in most of the stores. Three operate fountains. Four operate post office substations.
- <sup>3/</sup> The exception is the Brown-Adams store in Woonsocket. Five Massachusetts stores also operate under the Adams Drug trade name: Attleboro, Cambridge, Somerset, and the 2 in Fall River.
- <sup>4/</sup> See Standard Metropolitan Statistical Areas, 1964 edition, as amended May 24, 1966, published by Office of Statistical Standards, Bureau of the Budget. The Wakefield store is virtually on the boundary line of the area. Also within the area is the Employer's Attleboro, Massachusetts store, located 5 miles distant from the nearest Rhode Island store. The Employer's 2 stores in Fall River and 1 in Somerset, Massachusetts, located about 8 miles from the Rhode Island State line, are within a separate Fall River metropolitan area.

in Massachusetts, <sup>5/</sup> 7 in Connecticut, <sup>6/</sup> and 24 in New York, at points within and between the Buffalo-Niagara Falls and the Albany-Schenectady areas.

At its central office the Employer maintains records and prepares the payroll for all 83 stores. The central warehouse provides all stores with much of their merchandise. As to some merchandise such as newspapers, magazines, books, lunch counter items, certain drugs, and other items, the Employer designates the vendors from which the store managers may buy.

Store operations are under the overall supervision of a general store supervisor who reports to the Employer's treasurer and director of store operations. Under the general store supervisor are 7 "area" supervisors who assist store managers in solving problems arising in the operations of their stores. There is also a cosmetic supervisor who assists managers of stores in the New England States in the operation of their cosmetic departments. Three of the area supervisors service stores in the New England States. However, the stores which each services do not necessarily fall within a distinct geographic area, as stores are assigned to them on the basis of convenience, workload, talent, and experience with the particular problem arising. It is clear, therefore, that the Rhode Island stores do not comprise an administrative subdivision of the Employer's chain.

The central office exerts control of store operations in other ways. It establishes price lists, negotiates prices for items to be bought from the outside vendors, and formulates advertising content. Prices are

<sup>5/</sup> These stores are located in the eastern part of Massachusetts. Three of them do not operate a pharmacy.

<sup>6/</sup> One does not operate a pharmacy. The nearest Connecticut store is 50 miles from the Rhode Island stores. The average employee complement for Connecticut stores is 25; for Massachusetts and Rhode Island stores, it is 10 to 11.

uniform for all stores except as to fair-traded items and local discounts permitted for promotional or competitive purposes. Identical forms are prescribed for all stores. Central office personnel hire the supervisory and professional staff for stores in the 4 eastern States,<sup>7/</sup> as well as most stockmen and, on occasions, cosmeticians, and they screen all employment applications. The central office sets store hours.<sup>8/</sup> It issues store bulletins setting forth operational guide lines for store managers, including the duties of employees and their starting wages. All store clerks are given the same "PM's", bonuses for sales of certain items of merchandise. A uniform vacation policy is followed for all Rhode Island stores and the 5 Massachusetts stores which use the Adams Drug Store trade name. The central office arranges for a shopping service to submit factual reports on the competence and honesty of all store personnel. It administers a single non-contributory health and accident plan for all full-time employees at stores in the New England States, as well as group insurance plans for all store employees.

The store managers direct the day-to-day operations of their stores, within the guidelines set by the central office. Except when problems arise, area supervisors visit the stores infrequently. Store managers determine the size of the store complement, hire their own sales clerks, and recommend promotions. However, as above indicated, cosmeticians are sometimes hired by the cosmetic supervisor, and stockmen, who are assigned one per store, except at a few larger stores, and who have been promoted to store manager positions at a few stores, are generally hired by central office personnel. The stockmen and pharmacists, who are generally males, are interchanged and transferred from store to store on occasions: to wit, as part of the training of stockmen, on promotion to store managers, and

<sup>7/</sup> In case No. 1-RC-8507, in which the Petitioner herein sought a unit of all pharmacists employed at the Employer's Rhode Island stores, the Regional Director in a Decision issued October 28, 1965, found that all pharmacists are supervisors as defined in the Act. He indicated that, at all but 5 stores, the store managers were pharmacists and that all other pharmacists were assistant store managers.

<sup>8/</sup> Most of the stores, located in or near suburban residential areas, are "long hour" stores; those located in downtown business districts are "short hour" stores.



as substitutes during vacations and emergencies.<sup>9/</sup> On the other hand, the store clerks, who are mostly females, are rarely interchanged between stores.

From the foregoing, it is evident that there are a number of factors indicating, as contended by the Employer, that the store employees involved could be bargained for on the basis of an Employer-wide or New England States area-wide unit. Indeed, the facts support a grouping of stores within the Providence-Pawtucket-Warwick metropolitan area as an appropriate unit, and such a grouping would require the addition of only the Attleboro store to the Petitioner's proposed unit. However, in the absence of any history of collective bargaining, where no labor organization is seeking a broader appropriate unit, the Board has long held that the petitioning labor organization needs only to establish that the group of employees it has attempted to organize and seeks to represent is "an" <sup>10/</sup> appropriate unit.

Here, the Petitioner has restricted its interest to a Rhode Island State grouping of the Employer's drug store employees. The facts set forth above clearly demonstrate that the requested employees have substantial interests in common, notwithstanding the fact that they do not fall within a distinct administrative subdivision of the Employer's multistate operations. Although it is true that employees at stores outside the State share some of these interests, we are persuaded that the employees in the Rhode Island stores enjoy a special community of interest apart from the others by reason of the State's regulation of the retail drug industry. The Board has stated in cases arising in the insurance industry that groupings of <sup>11/</sup> district offices within a State may constitute appropriate geographic area units.

<sup>9/</sup> Once a year an inventory crew, made up of an inventory crew chief, an area supervisor, the cosmetic supervisor, and selected male store personnel, spends a day at each store.

<sup>10/</sup> See Davis Cafeteria, Inc. and Polly Davis Broward Cafeteria, Inc., 160 NLRB No. 80.

<sup>11/</sup> See State Farm Mutual Automobile Insurance Company, 158 NLRB No. 84; Metropolitan Life Insurance Company, 156 NLRB 1408, 1417; Ibid, 43 NLRB 962, 968.

We believe the same considerations apply to retail drug chains. The State of Rhode Island, under its police power, can and does regulate pharmacies and the sale and distribution of pharmaceutical, cosmetic, food and other products within its political boundaries. This control by the State also affects the terms and conditions of employment of all employees in the drug stores.<sup>12/</sup> We conclude, therefore, that all drug stores of the Employer within the boundaries of the State of Rhode Island constitute a clearly delimited geographic area appropriate for purposes of collective bargaining.

Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed at the Employer's drug stores located in the State of Rhode Island, including post office substation employees,<sup>13/</sup> but excluding pharmacists, store managers and assistant managers, guards, and all other supervisors as defined in the Act.<sup>14/</sup>

<sup>12/</sup> Without attempting to detail the extent of this control, we note that the State of Rhode Island has on its statute books laws governing the licensing of pharmacies and of pharmacists, and laws pertaining to health and safety in the operation of pharmacies and the sale and distribution of pharmaceutical, cosmetic, food and other products dispensed by drug stores within the State. The State of Rhode Island also imposes sales and payroll taxes and has other laws setting forth minimum standards for health and safety in employment.

<sup>13/</sup> The Petitioner would exclude 2 full-time post office substation employees employed at Stores 4 and 28. The record indicates that they are employees of the Employer, and share the same supervision and employment conditions as other employees. In addition to their principal post office duties, they receive public utility payments, maintain records, and, at times, perform other sales and non-sales work of the type performed by other store employees. We find that they have sufficient interests in common with other store employees to warrant their conclusion in the unit.

<sup>14/</sup> The Petitioner would exclude as supervisors fountain managers at 3 of the drug stores. As the record contains insufficient evidence pertaining to their status, we shall permit them to vote subject to challenge.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for Region 1 shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>15/</sup> Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Local 1325, Retail Clerks International Association, AFL-CIO.

Dated, Washington, D. C. 5/12/67

Frank W. McCulloch, Chairman

John H. Fanning, Member

Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

<sup>15/</sup> An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 1 within 7 days after the date of this Decision on Review and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. Excelsior Underwear Inc., 156 NLRB 1236.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

*3. 1. 1967*  
*1-10-6948*

ADAMS DRUG CO., INC.

Employer

and

LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO

Petitioner

Case No. 1-10-6948

Date issued June 9, 1967 ~~June 12, 1967~~

Type of Election:  
(Check one):

- ☐ Consent Agreement  
☐ Stipulation  
☒ Board Direction  
☐ RD Direction

(If applicable  
check either  
or both):

- ☐ 8(b) (7)  
☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 327
2. Void ballots 7
3. Votes cast for PETITIONER 137
- ~~4. Votes cast for EMPLOYER~~
- ~~5. Votes cast for EMPLOYER~~
6. Votes cast against participating labor organization(s) 192
7. Valid votes counted (sum of 3, 4, 5, and 6) 117
8. Challenged ballots 26
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 143
10. Challenges are (not) sufficient in number to effect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for:

PETITIONER

For the Regional Director

*[Signature]*

The undersigned acted as authorized observers in the counting and tabulating ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For PETITIONER

*[Signature]*

*[Signature]*

For \_\_\_\_\_

For \_\_\_\_\_

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

\*\*\*\*\*

In the Matter of

ADAMS DRUG CO., INC.

Employer

and

RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO, LOCAL 1325

Petitioner

\*\*\*\*\*

CASE NO. 1-RC-8949

DECISION ON OBJECTIONS  
and  
CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election by the National Labor Relations Board, dated May 12, 1967, an election was conducted on June 9 and 10, 1967 among certain employees of the Employer. The Tally of Ballots cast at said election is as follows:

Approximate number of eligible voters.....	329
Void ballots.....	1
Votes cast for Petitioner.....	137
Votes cast against participating labor organization.....	105
Valid votes counted.....	242
Challenged ballots.....	26
Valid votes counted plus challenged ballots.....	268

On June 16, 1967, the Employer filed timely objections to Conduct Affecting Results of the Election, serving copies on the Petitioner. These Objections allege the following:

"1. The Union represented to the employees of the employer falsely that all its members were covered by the health and welfare plan set out in Exhibit 1 attached hereto and made a part hereof by mailing a copy of the same to substantially all such employees at a time when the Employer could not make an effective reply thereto.

"2. The Union represented to the employees of the Employer as set out in Exhibit 1 that they could enjoy membership in the Union, which would include,

the health and welfare plan to which reference is made in Objection #1 without any cost to them until or unless the Union obtained a wage increase greater than the amount of dues it charges.

"3. The Union represented to the employees of the Employer that they could have all of the advantages of membership in the Union without charge to the employees of the Employer until and unless the Union secured a wage increase for the employees which was greater than the dues it charged as set out in Exhibit 1.

"4. The Union represented falsely that all employees represented by it get paid for ten (10) holidays each year, that all employees get six (6) weeks full pay for sick leave as set out in Exhibit 2 attached hereto and made a part hereof which was mailed to substantially all employees of the Employer."

In accordance with Section 102.69 of the Board's Rules and Regulations, Series 2, as amended, the undersigned has conducted an investigation which reveals:

In support of its Objections the Employer relies upon two handbills distributed by the Petitioner, referred to in the objections, and attached hereto, as Exhibits 1 and 2, respectively.

Exhibit 1, referred to in Objections #1, #2, and #3, is a copy of a circular mailed by the Petitioner to employees on June 5, 1967. This circular reads as far as at all pertinent as follows: (emphasis in the original)

REMEMBER

NO INITIATION FEES

NO DUES UNLESS YOUR PAY INCREASE IS GREATER THAN DUES

A WRITTEN UNION CONTRACT PROTECTS YOUR JOB - GETS YOU PAY INCREASES, A GOOD HEALTH AND WELFARE PLAN, AND MANY OTHER BENEFITS.

THINK

WHAT THE RETAIL CLENKS UNION HAS DONE FOR EMPLOYEES IN THE RETAIL INDUSTRY. WE ARE NEGOTIATING A \$1.75 PER HOUR RATE IN THE DISCOUNT CONTRACT. WE HAVE JUST RECENTLY COMPLETED A HEALTH AND WELFARE PLAN WHICH GIVES OUR MEMBERS, (full & part time), UP TO \$7500.00 LIFE INSURANCE, UP TO \$70.00 PER WEEK WHILE OUT SICK, HOSPITAL RATE OF \$27.00 PER DAY, \$300.00 SURGICAL FEE,



\$5.00 PER DAY FOR DOCTOR'S CALLS AND UP TO \$10,000.00 FOR MAJOR MEDICAL VACATIONS WITH PAY FOR PART TIME AS WELL AS FULL TIME EMPLOYEES. HOLIDAY PAY FOR PART TIME AS WELL AS FULL TIME EMPLOYEES.

The specific allegations made by the Employer with respect to this circular are set forth in Objections #1, #2, and #3. With respect to the statement concerning dues, it has been recognized that a pledge of reduced financial charges is legitimate provided it does not suggest a disparity of treatment based upon the manner in which an employee votes. Gilmore Industries, Inc., 140 NLRB 100. Investigation revealed that Petitioner has a health and welfare agreement with a chain which provides for maximum benefits substantially higher than those specified in Petitioner's circular. Although not free from ambiguity, the circular does not state that all employees would automatically be covered by the health and welfare plan mentioned therein. In addition, this circular as well as one dated June 6, 1967 which was also distributed by Petitioner refers to contract negotiations and as stated in Exhibit #1, "a written contract.....gets you pay increases, a good health and welfare plan<sup>1/</sup>..." This certainly would alert the employees that the benefits to be received are a matter of negotiation between the parties and the statement of benefits enumerated in the paragraph quoted above is what the Union has achieved elsewhere for its employees covered by its contracts. Although it may be held that the Petitioner's statements respecting dues and health and welfare benefits are couched in less than precise and explicit language, the Board has stated that "the mere fact that a message is inartistically or vaguely worded and subject to different interpretations will not suffice to establish such misrepresentation as would lead us to set the election aside." Hollywood Ceramics Company, Inc., 140 NLRB 221, 224.

Exhibit #2, referred to in Objection #4, is a copy of a circular mailed by the Petitioner to the employees on June 2, 1967. The Employer specifically objects to two statements contained in the circular - i.e. that everybody gets ten paid holidays a year<sup>1/</sup> and six weeks sick leave full pay.<sup>1/</sup> Investigation revealed that Petitioner has a contract with a chain along with other locals and all employees covered by this contract in a particular area receive ten paid

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<sup>1/</sup> Emphasis supplied.



holidays a year. The sick leave benefit is from a contract Petitioner has with a chain in the area serviced by it. These statements may be held to be exaggerated, but they do not involve such a substantial departure from the truth so as to warrant the setting aside of the election. <sup>2/</sup> Hollywood Ceramics Company, Inc., supra. In addition, promises made by the Union were the subject of a letter from the Employer circulated during the week of the election and were certainly an issue in the pre-election campaign as to which the Employer had and used the opportunity to present its own views.


In view of the above, the undersigned finds no merit to any of the Objections, and they are hereby overruled in their entirety.

#### CERTIFICATION OF REPRESENTATIVE

Pursuant to authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that RETAIL CLEPMS INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL 1325, has been designated and selected by a majority of the employees of the above-named Employer, in the unit described below as their representative for purposes of collective bargaining, and that, pursuant to Section 9 (2) of the Act, as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

UNIT: All full-time and regular part-time employees employed at the Employer's drug stores located in the State of Rhode Island, including post office substation employees, but excluding pharmacists, store managers and assistant managers, guards and all other supervisors as defined in the Act.

  
Robert E. Greene, Acting Regional Director  
National Labor Relations Board  
First Region  
Boston, Massachusetts

Dated at Boston, Massachusetts  
this 18th day of July, 1967.

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<sup>2/</sup> Since the statements of benefits do not constitute such a substantial departure from the truth or other "campaign trickery," the Employer's contention that it had insufficient time with which to reply has no merit. The Board has consistently held that parties to an election are not entitled, as a matter of right to have the last opportunity to reply to propaganda. Pinkerton's National Detective Agency, Inc., 124 NLRB 1076, 1077; Celanese Corp., 121 NLRB 303, 307; Comfort Slipper Corp., 112 NLRB 183, 184-5.

BEWARE

OF LAST MINUTE COMPANY PROPAGANDA. THEY HAVE HAD PLENTY

OF TIME TO AIR OUT THEIR CLAIMS. ANYTHING THEY SAY NOW IS SHORT OF THE TRUTH AND WITH A HOPE THAT THE UNION WILL NOT HAVE TIME TO ANSWER.

REMEMBER

- o NO INITIATION FEES
- o NO DUES UNLESS YOUR PAY INCREASE IS GREATER THAN DUES
- o A WRITTEN UNION CONTRACT PROTECTS YOUR JOB - GETS YOU PAY INCREASES, A GOOD HEALTH AND WELFARE PLAN, AND MANY OTHER BENEFITS.

THINK

WHAT THE RETAIL CLERKS UNION HAS DONE FOR EMPLOYEES IN THE

RETAIL INDUSTRY. WE ARE NEGOTIATING A \$1.75 PER HOUR RATE IN THE DISCOUNT CONTRACT. WE HAVE JUST RECENTLY COMPLETED A HEALTH AND WELFARE PLAN WHICH GIVES OUR MEMBERS, (full & part time), UP TO \$7500.00 LIFE INSURANCE, UP TO \$70.00 PER WEEK WHILE OUT SICK, HOSPITAL RATE OF \$27.00 PER DAY, \$300.00 SURGICAL FEE, \$5.00 PER DAY FOR DOCTOR'S CALLS AND UP TO \$10,000.00 FOR MAJOR MEDICAL. VACATIONS WITH PAY FOR PART TIME AS WELL AS FULL TIME EMPLOYEES. HOLIDAY PAY FOR PART TIME AS WELL AS FULL TIME EMPLOYEES.

IT PAYS

TO BELONG TO THE RETAIL CLERKS UNION. WE GUARANTEE THAT

YOU WILL COME OUT WITH MORE PAY, MORE BENEFITS AND JOB SECURITY, IF YOU WILL:

VOTE  
FOR YOURSELF

YES



NEED A RIDE TO THE POLLS.

CALL US

# RETAIL CLERKS INTERNATIONAL ASSOCIATION

Page 2-

## THE SO-CALLED NON ORGANIZED STORE BENEFITS

- |  |  |
|--|--|
| A. PAID VACATIONS                          | WHO GETS THEM? PEOPLE ARE HIRED AND FIRED SO OFTEN THAT VERY FEW ARE ELIGIBLE. |
| B. PAID HOLIDAYS                           | WHO GETS THEM? PEOPLE ARE HIRED AND FIRED SO OFTEN THAT VERY FEW ARE ELIGIBLE. |
| C. OVERTIME PAY                            | WHO GETS OVERTIME?   |
| D. LEAVE OF ABSENCE                        | TRY GETTING A LEAVE OF ABSENCE. FIRED!!!                                       |
| E. SICK LEAVE                              | ASK ABOUT THIS ONE. VERY INTERESTING!  |
| F. VOLUNTARY HOSPITAL AND SURGICAL PROGRAM | WHO GETS THEM? PEOPLE ARE HIRED AND FIRED SO OFTEN THAT VERY FEW ARE ELIGIBLE. |
| G. PERIODIC WAGE REVIEWS                   | WHO GETS WAGE INCREASES?   |
| H. JOB SECURITY                            | HOW MANY EMPLOYEES LAST A YEAR??   |

THE FIRST COLUMN ABOVE LOOKS GOOD ON PAPER, BUT HOW MANY EMPLOYEES ARE ELIGIBLE? VERY FEW, I'M SURE!

## RETAIL CLERKS UNION LOCAL 1325 RECORD

### THE FOLLOWING ARE TRUE FACTS NOT FICTION

- |  |   |
|--|---|
| A. PAID VACATIONS                          | WHO GETS THEM? EVERYBODY.   |
| B. PAID HOLIDAYS                           | WHO GETS THEM? EVERYBODY. TEN A YEAR.   |
| C. OVERTIME PAY                            | OUR MEMBERS GET PAID A DECENT SALARY SO THAT OVERTIME ISN'T NECESSARY.          |
| D. LEAVE OF ABSENCE                        | AT LEAST SIX MONTHS TO ANYONE INCLUDING PART TIME EMPLOYEES.                    |
| E. SICK LEAVE                              | SIX WEEKS FULL PAY.   |
| F. VOLUNTARY HOSPITAL AND SURGICAL PROGRAM | EIGHTEEN DOLLAR A DAY PLAN AT NO COST TO OUR MEMBERS.                           |
| G. PERIODIC WAGE REVIEWS                   | UNION MEMBERS DON'T NEED REVIEWS BECAUSE THEY AUTOMATICALLY GET WAGE INCREASES. |
| H. JOB SECURITY                            | OUR MEMBERS GET LAID OFF ACCORDING TO SENIORITY.                                |

PLEASE COMPARE THE TWO RECORDS ABOVE. THEN DECIDE WHICH IS BETTER.

Exhibit D

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of :  
ADAMS DRUG CO., INC. :  
Employer :  
and :  
RETAIL CLERKS INTERNATIONAL :  
ASSOCIATION, AFL-CIO, LOCAL 1325 :  
Petitioner :

Case No. 1-RC-8949

REQUEST FOR REVIEW

Adler, Pollock & Sheehan  
By its Counsel  
William J. Sheehan.

The employer, by its attorneys, filed timely Objections to Conduct Affecting Results of an Election held in the above-entitled matter on June 9 and 10, 1967. In those Objections, it was urged that the election held herein be set aside due to certain misrepresentations as to the extent of coverage of a health and welfare plan which the employees were allegedly to participate in without cost to them until the Union obtained a wage increase greater than the amount of dues it charges, misrepresentations as to the amount of sick leave and the number of paid holidays, and also due to the unlawful incentive device of promising advantages of union membership with no dues until an off-setting pay increase was secured. These misrepresentations and the unlawful incentive proposal were presented in circulars (see exhibits 1 and 2) distributed to employees shortly before the election. On July 18, 1967, the Acting Regional Director for the First Region issued a Decision on Objections and Certification of Representative in which the employer's Objections were dismissed solely on the basis of an administrative investigation.

The action of the Regional Director in overruling the Objections without a hearing was arbitrary and deprived the employer of its due process rights. Substantial and material factual issues were raised in the Objections and decided adversely to the employer without an opportunity for a full and open discussion of the issues that a hearing would have afforded. The decision of the Regional Director

represents a departure from and misapplication of Board precedent. Moreover, the Regional Director's decision on certain material issues of fact is erroneous and based on incorrect information apparent on the face of the Decision.

Inasmuch as the rights of the employer have been prejudiced by the Regional Director's decision, the employer respectfully requests that the Board grant the instant Request for Review. Exhibits 1 and 2 to which reference is made are exhibits to the Objections to the Election and copies are attached.

#### ARGUMENT

The Board does not regulate mere propaganda on the part of an electioneering union, but will set aside an election where there is a material misrepresentation of fact by one who knows the truth when no other party involved has had sufficient notice of the misrepresentation to correct the mistaken impression thereby created prior to the election. Celanese Corp. vs. NLRB 291 F2d 224. The test is whether the employees' freedom of choice is substantially impaired where the misrepresentations relate to matters of vital interest to the employees and within the union's peculiar knowledge, where the employees are unable to independently evaluate the truth or falsity of the representations, and where the employer does not have a sufficient time to rebut the inaccuracies. Cleveland Trencher Co. 130 NLRB 600 (1961). There is no question that the misrepresentations here involved were material; they were calculated to, and di

in fact have a significant impact on the election. The language used in the flyer distributed to the employees reads as follows (exhibit 1): "We have just recently completed a health and welfare plan which gives our members, full and part-time, up to \$7500.00 of life insurance, up to \$70.00 per week while out sick, hospital rate of \$27.00 per day, \$300.00 surgical fee, \$5.00 per day for doctor's calls and up to \$10,000.00 for major medical." Such language clearly implies that all members of the union, full and part-time, would come within these terms of the health and welfare plan. This statement was false and made with knowledge of its falsity by the union; it had an undeniably significant impact on the election since the misrepresentation as to membership in the health and welfare plan was not a mere statement of future intention or an illusory promise contingent upon negotiations with any particular employer but rather was a falsification as to a benefit which was within the union's power to grant independently of negotiation with an employer. The employees who received the circulars could reasonably assume not only that the health and welfare plan was presently effective as to all union members, both full and part-time but also that they would automatically be covered if the union won the election. The entire tenor of the circulars was directed at leaving the employees with the impression that they would automatically receive the listed benefits and hence impaired their expression of free choice unlawfully. Bowman Biscuit Co. 123 NLRB 202 (1959)



There are flagrant distortions and mis-statements in the circulars. It was represented to the employees in the flyer distributed approximately two days before the election (exhibit 1) that the union's health and welfare plan provided for life insurance in amounts up to \$7500.00 for both full and part-time workers. In fact part-time workers were covered by policies in a maximum amount of \$1,000.00. This circular represented that employees, both part-time and full time, were eligible for up to \$70.00 per week in sick pay when in fact part-time workers are eligible for only \$15.00 per week in sick leave benefits. The circular also contained the misrepresentation that all workers, both part-time and full time, were eligible for \$5.00 per day for doctor's calls and up to \$10,000 in major medical coverage, when in fact part-time workers received neither of these benefits. The above-listed facts as to the coverage of part-time workers in the health and welfare plan come from one of the union's health and welfare plans, a copy of which was supplied to the Regional Director.

Here, the union misrepresented that its members get ten paid holidays a year. This is not true - at least two of the union's agreements provide for only eight and nine paid holidays respectively and part-time workers get paid only a percentage for holidays based on the amount of time they have worked. The union further misrepresented that its contracts provide for six weeks full pay for sick leave. This is not so - one of the union's contracts provide

for six days, not six weeks, of sick leave per employment year; the other has a clause allowing four days for sick leave and in neither may sick leave be accumulated from year to year. The circular further represents that everyone gets paid vacations when such, in fact, are given only after one year of continuous employment. One of the union's health and welfare plans requires that in order for part-time workers to participate they must work an average of at least twenty (20) hours per week. This same plan calls for a contribution by the employer of \$8.67 per month per employee, which represents a cost of approximately \$.05 per hour for the plan. For such a cost, it is simply not possible to secure a plan whose benefits are as extensive as those listed in the circular. Copies of both of the union's agreements and of one of its two health and welfare plans were furnished to the Regional Director.

The significance of the misrepresentations as to the health and welfare plan and as to the other benefits allegedly secured by the union can only be gauged by noting the fact that a majority of the company's employees, approximately 75%, are part-time workers. Most of the part-time help of the company works less than twenty (20) hours per week. Thus, a very large percentage of the employees would not be eligible for any benefits at all under one of the health and welfare plans. This fact was well known to the union, yet it is apparent that the circulars were carefully worded so as to give the part-time workers the impression that they would receive full coverage.

under the health and welfare plan. It should be pointed out that this was a close election, the actual vote tally being 137 to 105 in favor of the union. Even if the union secured the affirmative vote of 100% of the approximately 85 full time employees it would have had to secure the affirmative votes of 52 part-time employees. Therefore, it is, to say the least, highly probable that some of the votes for the union were secured by these misrepresentations. Thus the falsifications could well have been the determinative factor in producing the election result.

The misrepresentations in this case are in reality indistinguishable from those situations where a union misrepresents the wage rate it has secured at other plants whose employees it represents. Health and welfare plans, paid holidays and sick leave pay are simply different forms of wage distribution, a fact of which all employees are aware. Therefore, deliberate material misrepresentations as to fringe benefits should be treated in the same way as wage misrepresentations in evaluating election results. In fact, the Board has stated that economic benefits of a fringe nature, like basic wage rates, are matters of vital concern to the employee. Cleveland Trencher Co. supra.

The material misrepresentations were made in this case at a time so close to the election that an effective reply thereto was not possible. Exhibit 1 was passed out about two days before the election, while exhibit 2 was circulated about a week before the

election. There are so many stores involved herein that it simply was not possible for the employer to prepare an effective reply, even if it were then aware of the details of the union's various contracts and welfare plans which came to its attention after the election. For these reasons, the election should be voided. Grede Foundries, Inc. 153 NLRB No.92 (1965); Kawneer Co. 119 NLRB 1460 (1958).

In deciding whether employees are able to evaluate false statements, such as those made by the union in this case, the question to be asked is whether the employees could have reasonably evaluated such statements on the basis of all the objective circumstances. Pinkerton National Detective Agency, Inc. 124 NLRB. 1076 (1959). Applying this criterion to the facts of the present case, it is apparent that the sheer number of the falsehoods circulated by the union as to matters within its special knowledge which could not be independently verified by the employees, particularly in relation to the part-time workers, so clouded the issues that reasonable evaluation by the employees was not possible. Therefore, the election should be set aside. Cross Co. 123 NLRB 1503 (1959); Celanese Corp. 121 NLRB No. 42; N.L.R.B. v. Houston Chronicle and Publishing Co. (CA5) 300 F2d 273. Moreover, where misrepresentations are major and highly misleading as in the present case, the employer has only to show that it is sufficiently likely that employees were misled that it cannot be told whether they were or not. Thus, there is no

requirement that it be shown that employees actually were misled.

N.L.R.B. v. Trancoa Corp. (1CA) 303 F.2d 456.

The representation made by the union to the employees that the latter could have all the advantages of union membership until the union secured a wage increase for the employees greater than the dues it charged, also transgressed the boundaries of lawful propaganda and illegally interfered with the employees' freedom of choice. This is clearly distinguishable from those cases where the union has offered a reduction or waiver of initiation fees if the union wins the election. Here there is a promise of substantive benefit whose prerequisite was that the union win the election. Therefore, implicit in the promise of suspension of dues until an offsetting pay increase was secured was the condition that the union win the election. It is conceivable that the union could represent the employees for a considerable length of time before securing for them a wage increase larger than the dues it charges. The union during this open-ended period promised to waive what is the ordinary consideration for its services as collective bargaining representative, i.e. union dues. The union is then foregoing its right to dues from the prospective members for an indefinite period in exchange for the latter's votes in the election. Unlike initiation fees which, if waived at all are waived once only with the amount waived capable of exact determination, the waiver of dues here could be for an indefinite period and could involve a substantial but presently unknown

amount of money. It is submitted that this tactic amounts in substance to buying votes. The type of incentive here offered to secure votes for the union constitutes unlawful coercion and is an attempt to deprive employees of their right to a free and unfettered choice of a collective bargaining representative. Therefore, the dues proposal is urged as a further ground for setting aside the election.

#### THE REGIONAL DIRECTOR'S DECISION

The Decision on Objections issued by the Regional Director rather summarily disposes of the employer's objections. An examination of the underlying premises of the decision shows it to be unsound. To counter the employer's contention that the dues proposal of the union is illegal, the Regional Director cites the case of Gilmore Industries Inc. 140 NLRB 100. That case, however, is clearly inapposite as it involved a pledge by the union of no initiation fees (not a waiver of initiation fees until an equal benefit was obtained from the employer), as distinguished from union dues, if the union won the election and the offer was made only to counter a pre-election rumor that the union had a \$300 initiation fee. There are no cases, so far as we have been able to determine, precisely on the point here presented. The union pledged itself to charge no dues unless it secured an offsetting wage increase; unlike the waiver of initiation fees, this was not a once and for all waiver

nor was the ultimate amount of the waiver capable of determination. As outlined above, the dues under this proposal could be waived for an indefinite period of time. Moreover, union dues, not union initiation fees, are the consideration for the services the union provides, the cuid pro cuo for collective bargaining representation. Therefore, this type of proposal which in substance amounts to an attempt to buy votes, is illegal.

The decision on Page 3 states that the petitioner has a health and welfare plan with a chain that provides for maximum benefits substantially higher than those specified in the petitioner's circular. Examination of the plan in question, however, reveals that the benefits available to part-time workers are substantially less than those mentioned in the circulars. In many cases, the employees would not be eligible at all inasmuch as a majority of the part-time help employed by Respondent does not work the twenty (20) hours a week which is required for participation in the plan at one of the companies whose employees the union represents. Further, to participate in the health and welfare plan in effect by the terms of the union's contract with the grocery chain, it is required that part-time workers be employed for one or more continuous years. Copies of the pertinent parts of the health and welfare plan and the contract of the union with the grocery chain and pertinent parts of the contract with the other employer which provides that employees must work twenty (20) hours per week to participate in that employers welfare plan were furnished to the Regional Director.



The Decision concedes that the circular is not free from ambiguity but points out that the circular does not specifically state that all employees would automatically be covered by the health and welfare plans. However, it is clear that the ordinary layman would infer such automatic coverage and, in fact, was intended so to do by the language of the circular (see exhibit 1). The contention that the employees were alerted to the fact that benefits to be received by the employees were a matter of negotiation between the parties because of the wording in exhibit 1, "a written contract ... gets you pay increases, a good health and welfare plan ...." is not convincing. The employees, in fact, more likely deduced that the welfare plan referred to is that plan whose details are set forth in the circular. There is little doubt that this was the impression the circulars were intended to create. This is not a case as contended by the Regional Director where a message has been inartistically worded; rather, there have been misrepresentations involving substantial departures from the truth that have been very artistically worded and undeniably had a great impact on the election and which require that it be set aside. Hollywood Ceramics Company, Inc. 140 NLRB 221.

The Regional Director relates that administrative investigation revealed that the union has a contract with a chain in which there is a provision for six weeks sick leave as listed in exhibit 2. Even if this were true the thrust of the circular is that everyone who is

union member gets six weeks sick leave per year. Our investigation has revealed no such contract; in fact, the maximum amount of sick leave permitted in any of the union's contracts known to us, copies of which were furnished to the Regional Director, is six days, not six weeks. This cannot be said to be an insubstantial misrepresentation. The Regional Director has based his decision in important part on the premise that the union does indeed have a contract which provides for six weeks sick leave, and hence there is no substantial departure from the truth. This assumes, of course, that the employees of the Company were to believe that the union was talking about a provision in an existing contract covering some of its members - however the thrust of exhibit 2 is that all union members have it. However, as far as we have been able to determine, there is no such contract. We doubt that there is a retail store contract in the country that provides for six paid weeks of sick leave each year. Since the Regional Director's Decision is based in part on this erroneous premise, it should be reversed.

For each and all of the above-stated reasons, it is respectfully requested that this Request for Review of the Regional Director's Decision be granted, and that the election held in this matter on June 9 and 10, 1967, be set aside and the certification rescinded.

Dated: July 26, 1967

Providence, Rhode Island.

ADAMS DRUG CO., INC.

By its Attorneys

Adler, Pollock & Sheehan

By:


  
WILLIAM J. SHEEHAN

EXHIBIT E

4/5

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FM HOWARD W KLEES DEPUTY EAS SEC NLRB WASHINGTON DC/NLRB/ NLRB/  
TO RUEVDAC/2/ALBERT J ROBAN DIR NLRB BOSTON MASS

TO RUEVDAC/2/STEPHEN DOVESICK 44 SCHOOL ST BOSTON MASS

BT

RE: ADAMS DRUG COMPANY, INC., 1-RC-6949. IT IS HEREBY ORDERED  
THAT EMPLOYER'S REQUEST FOR REVIEW OF ACTING REGIONAL DIRECTOR'S  
DECISION ON OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE BE, AND  
IT HEREBY IS, DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING  
REVIEW. BY DIRECTION OF THE BOARD:

BT

CONFIRMATION COPY

This is a confirmation copy of a message telephoned  
to: \_\_\_\_\_  
on \_\_\_\_\_ at \_\_\_\_\_ K.

GENERAL SERVICES ADMINISTRATION  
Transportation and Communications Service  
Telecommunications Office  
Boston, Massachusetts

Transmitted: Capital 3-2645 By: \_\_\_\_\_

NNNN

125102 EVDAC

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

\*\*\*\*\*

In the Matter of

ADAMS DRUG COMPANY

and

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION,  
AFL-CIO

CASE NO. 1-CA-6084

\*\*\*\*\*

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 1325, Retail Clerks International Association, AFL-CIO, 175 Bedford Street, Fall River, Massachusetts, (herein called Union) that Adams Drug Company, 75 Sabin Street, Pawtucket, Rhode Island, (herein called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq. (herein called the Act) the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Acting Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1. The Charge in this proceeding was filed by the Union on September 20, 1967 and a copy thereof served upon Respondent on September 20, 1967.

2 (a) Respondent is a Rhode Island corporation with its principal place of business located at 75 Sabin Street, Pawtucket, Rhode Island and at all times material herein has been engaged at its 83 retail drug stores located in the states of Connecticut, Kansas, New York, Massachusetts, Oklahoma and Rhode Island, in the retail sale of drug products.

(b) Respondent, during calendar year 1966, which period is representative of all times material herein, in the course and conduct of its business operations described in subparagraph 2 (a) above, sold and

distributed drug products, from which it derived a gross revenue in excess of \$500,000.

(c) Respondent, during calendar year 1966, in the course and conduct of its business operations described in subparagraph 2 (a) above, purchased and received goods, materials and supplies valued in excess of \$50,000, which goods, materials, and supplies were received by Respondent after having been transported directly across state lines.

3. Respondent is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Union is, and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

5. All Respondents full time and regular part-time employees employed at its drug stores located in the State of Rhode Island, including post office substation employees, but excluding pharmacists, store managers and assistant managers, guards and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

6. On or about June 9, 1967, and June 10, 1967, in the matter of Adams Drug Co., Inc. Case No. 1-RC-8949, pursuant to a Decision on Review and Direction of Election, an election was conducted by the Board and as a result, on July 18, 1967, the Union was certified as having been designated and selected by a majority of Respondent's employees in the unit described in paragraph 5 above as their representative for the purposes of collective bargaining with Respondent, and pursuant to Section 9 of the Act, as amended, and at all times from that date, the Union has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

7. Commencing on or about September 11, 1967, and continuing to date, the Union has requested, and is requesting Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and terms and other/conditions of employment as the exclusive bargaining representative of all of the employees of Respondent in the unit described in paragraph 5 above.

8. On or about September 19, 1967, and at all times thereafter, Respondent did refuse, and continues to refuse, upon request, to bargain collectively with the Union as the exclusive collective bargaining representative of all of the employees in the unit described in paragraph 5 above.

9. Respondent, by the acts and conduct described in paragraph 8 above did fail and refuse, and does now fail and refuse, to bargain collectively with the statutory collective bargaining representative of its employees, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

10. By the acts described above in Paragraphs 8 and 9 and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

11. The activities of Respondent, described above in Paragraphs 8, 9, and 10, occurring in connection with the operations of Respondent, described above in Paragraphs 2 and 3 have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

12. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 24th day of October, 1967 at 10:00 o'clock in the forenoon, Eastern Daylight Saving Time at Room 125, Rhode Island Department of Labor, 235 Promenade Street, Providence, Rhode Island, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor

## Exhibit G

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

In the Matter of  
ADAMS DRUG COMPANY

and

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION,  
AFL-CIO

Case No. 1-CA-6084

ANSWER OF RESPONDENT

Now comes ADAMS DRUG CO., INC., by its attorneys, and makes its answer to the Complaint in this matter issued by the Acting Regional Director on October 5, 1967.

1. The Respondent denies that its corporate name is Adams Drug Company.

2. The Respondent admits the allegations of Paragraphs 1, 2, 3 and 4 of the Complaint.

3. The Respondent denies the allegations of Paragraph 5 of the Complaint that the unit set forth therein constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, and further answering, states that the unit set forth therein violates the provisions of Section 9 (c) (5) of the Act in that it was determined to be appropriate, using as a standard the extent to which the labor organization claimed to have organized the employees of the Respondent, and the designating of such unit as an appropriate unit for collective bargaining purposes was an arbitrary and capricious act, not based upon preexisting lawful standards or any definitive change of the same.

4. The Respondent admits the allegations of Paragraph 6 of the Complaint. Further answering, the Respondent



states that on or about June 16, 1966, the Regional Director, First Region, in his Decision and Order, dismissed the petition, 1-RC-8949, of the labor organization seeking certification in the unit alleged to be appropriate in Paragraph 5 of the Complaint based upon standards for the determination of an appropriate unit in the circumstances of the business of the Respondent. Upon request of the labor organization for review of the Decision and Order of the Regional Director, the request was granted even though it was not made on any of the four grounds which the Board states in its Rules and Regulations, Sec. 102-67 (c), is a condition precedent to granting a request for review. Thereafter, the Decision and Order of the Regional Director to dismiss the petition, Case No. 1-RC-8949, was reversed, and a Decision and Direction of Election was issued, finding that the unit sought by the labor organization was an appropriate unit, though the decision failed to set forth any change in the standards of determining a unit which is appropriate in the circumstances of the Respondent's business operations, and such Decision and Direction of Election was arbitrary and capricious in determining that the unit set forth therein was an appropriate unit for collective bargaining purposes under Section 9 (b) and (c) of the Act.

Further answering, the Respondent states that it filed timely Objections to Conduct Affecting Results of Election, which was conducted as a result of such Direction, in which it set forth conduct on the part of the labor organization which coerced, restrained and interfered with the free will of the employees eligible to vote in selecting or refusing to select the labor organization as their collective bargaining representative in that the labor organization (1) falsely claimed that all its members were covered by a certain health and welfare plan when, in fact, only a portion of its members were covered by such or a

similar health and welfare plan; (2) held out to the employees of the Respondent that they would enjoy membership in the Union, including the benefits of such health and welfare plan, without any cost to them until or unless the labor organization obtained a wage increase from the Respondent greater than the amount of dues it charged to such employees; (3) held out to the employees of the Respondent that they could have all the advantages of membership in the labor organization without charge until it obtained a wage increase from the Respondent greater than the dues it charged such employees, and (4) held out that all employees of other employers then represented by the Union, received ten (10) paid holidays each year and that all such employees received six (6) weeks' full pay for sick leave each year, which claims were false, and said objections on the part of the Respondent were denied and dismissed without affording a hearing thereon to the Respondent, though under the standards of the Board that then and thereafter existed, these objections constituted coercion, restraint and interference with the ability of employees of the Respondent to freely select or to reject the labor organization as their collective bargaining representative and were grounds for setting aside such election.

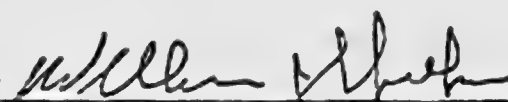
5. The Respondent admits the allegations of Paragraphs 7 and 8 of the Complaint.

6. Respondent denies the allegations of Paragraphs 9, 10, 11 and 12 of the Complaint.

WHEREFORE, the Respondent requests that the Complaint be dismissed.

By its Attorneys,

ADLER, POLLOCK & SHEEHAN

By   
William A. Sheehan

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

In the Matter of  
ADAMS DRUG COMPANY

and

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION,  
AFL-CIO

Case No. 1-CA-6084

AMENDMENT TO RESPONDENT'S ANSWER

Now comes ADAMS DRUG CO., INC., by its attorneys, and makes this Amendment to the Answer of Respondent filed in this matter.

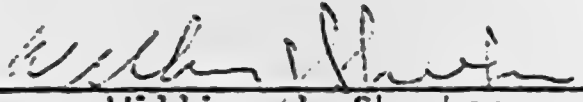
Paragraph 4 of said Answer is amended to add the following thereto:

"And further answering, the Respondent states that the Board, in its Decision and Direction of Election, found as to the Respondent's stores in the unit sought by the Petitioner, 'All are in the Providence-Pawtucket-Warwick metropolitan area, and cited Standard Metropolitan Statistical Areas, 1946 Edition, as amended May 24, 1966, published by the Bureau of the Budget, as the authority for such finding, and it further found that the Wakefield, Rhode Island, store of the Respondent was not within such area but near the borderline thereof and included it in the unit and that the Attleboro, Massachusetts, store of the Respondent, though within said area, was not included within the appropriate unit. The Decision and Direction of Election, however, did incorporate within the appropriate unit, so-called, employees in Respondent's Westerly, Rhode Island, and Middletown, Rhode Island, stores, neither of which are included in said Metropolitan

Providence area, as defined, and as a result thereof, five employees employed at the Attleboro store of the Respondent were not permitted to vote in said election though falling within an area unit upon which the Board based its decision. Eleven employees in the Wakefield, Rhode Island, store, eight in the Westerly, Rhode Island, store and eleven in the Middletown, Rhode Island, store were found eligible to vote, even though all such stores were outside of the area unit found appropriate by the Board based upon the foregoing standard, and, therefore, the action of the Board in finding the alleged appropriate unit to be appropriate was arbitrary and capricious."

By its Attorneys,

ADLER, POLLOCK & SHEEHAN

By   
William J. Sheehan

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF TRIAL EXAMINERS  
WASHINGTON, D. C.

ADAMS DRUG COMPANY

and

Case No. 1-CA-6084

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION,  
AFL-CIO

ORDER ON MOTION FOR SUMMARY JUDGMENT

On October 18, 1967, Counsel for the General Counsel filed a Motion for Summary Judgment. On October 20, 1967, Trial Examiner Charles W. Schneider issued an Order to Show Cause as to whether or not the Motion should be granted. In response to the Order to Show Cause, Respondent set forth that it has newly discovered or previously unavailable evidence concerning matters which were considered in the representation proceedings and relied on by the Board in its Decision and Direction of Election in Case No. 1-RC-8949.

Under these circumstances, the Motion for Summary Judgment is denied, and a hearing to determine the unfair labor practice issues alleged in the Complaint in Case No. 1-CA-6084 is hereby scheduled for January 29, 1968, at 10 a.m. at a place to be designated by the Regional Director for Region 1.

*Sidney Lindner*  
\_\_\_\_\_  
Sidney Lindner  
Trial Examiner

Dated: December 22, 1967

## SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Arthur Souza, Secretary-Treasurer, Retail Clerks Union, Local 1325,  
Retail Clerks International Association, AFL-CIO, 176 Bedford  
Street, Fall River, Massachusetts  
*Request therefor having been duly made by*

William J. Sheehan, attorney for Adams Drug Company,  
530 Hospital Trust Building, Providence, Rhode Island  
*FOR THE RECORD REQUIRED AND DIRECTED TO APPEAR BEFORE*

a Trial Examiner *of the National Labor Relations Board,*  
Room 323, Federal Building, Post Office Annex, Exchange Terrace,  
in the City of Providence, Rhode Island  
on the 29th day of January, 1968, at ten o'clock a. m.  
of that day, to testify in the Matter of

Adams Drug Company, Case No. 1-CA-6084

*And you are hereby required to bring with you and produce at said time and place the  
following books, records, correspondence, and documents:*

The original, or if not available, copies of:

1. All written contracts in effect on June 1, 1967, to which Local 1325, Retail Clerks International Association, AFL-CIO, was a party, individually or jointly with other labor organizations, with any employer or employers as the other party, setting forth the wages, hours and working conditions of employees of the employees of said employers.
2. All written agreements, including declarations of trust, in effect on June 1, 1967, with employers, whether Local 1325, Retail Clerks International Association, AFL-CIO, was an individual or joint party with other labor organizations thereto, by which welfare or pension plans were commenced or, if previously in being, were continued in effect for the benefit of the employees of said employers.
3. All written agreements, including declarations of trust, in effect on June 1, 1967, to which the nominees of any employers who have agreements set out in No. 1 above are parties and the nominees of Local 1325, Retail Clerks International Association, AFL-CIO, are parties, by which welfare or pension plans were commenced or, if previously in being, were continued in effect for the benefit of the employees of said employers.
4. All separate documents, and without limiting the generality thereof, including insurance policies and welfare and pension plans, which set forth itemized benefits to employees and the requirements for obtaining the same under the terms of the agreements set out in Nos. 2 and 3 above.
5. All documents referred to in Nos. 1, 2, 3 and 4 above which were executed by Local 1325, Retail Clerks International Association, AFL-CIO, on or after June 1, 1967, with an effective date on or after June 10, 1967.

# RETURN OF SERVICE

I hereby certify that, being a person over 18 years of age, I duly served a copy of the within subpoena

by person  
☒ by registered mail  
☐ by telegram  
☐ by leaving copy at principal office or place of business, to wit:

(Indicate by check V method used)

on the person named herein on

11/29/68

(Month, day, and year)

(Name of person making service)

(Official title, if any)

I certify that the person named herein was

in attendance as a witness at

on

(Month, day or day, and year)

(Name of person certifying)

(Official title)

## NATIONAL LABOR RELATIONS BOARD

1-CA-6624

Docket No.

OFFICIAL EXHIBIT NO. P-1

Disposition

Identical

Resolved

Rejected

In the matter of

Date 1/29/69

Witness

Reporter

No. Pages



*Recap Ex. 5*

# CHAPTER 31—RHODE ISLAND FOOD, DRUGS AND COSMETICS ACT

SECTION.		SECTION.	
21-31-1.	Short title.	21-31-13.	Poisonous or deleterious substance—Regulations as to use.
21-31-2.	Definitions.	21-31-14.	Adulterated drug or device.
21-31-3.	Prohibited acts.	21-31-15.	Misbranded drug or device.
21-31-4.	Injunctions authorized.	21-31-16.	Sale of new drugs—Regulations and procedure—Exceptions.
21-31-5.	Violations of act—Penalty—Exceptions.	21-31-17.	Adulterated cosmetics.
21-31-6.	Embargoed articles—Condemnation and destruction.	21-31-18.	Misbranded cosmetics.
21-31-7.	Violations reported to attorney general—Notice and hearing on violation.	21-31-19.	False advertising.
21-31-8.	Notice of minor violations—Warnings.	21-31-20.	Regulations promulgated by director—Hearing—Notice.
21-31-9.	Promulgation of reasonable standards by director.	21-31-21.	Inspection of establishments.
21-31-10.	Adulterated food.	21-31-22.	Publication of court orders, judgments and decrees—Dissemination of information.
21-31-11.	Misbranded food.	21-31-23.	Severability of provisions.
21-31-12.	Contamination of food with microorganisms—Suspension of permit—Inspection.		

21-31-1. Short title.—This chapter may be cited as the Rhode Island food, drugs and cosmetics act.

## History of Section.

As enacted by P. L. 1959, ch. 56, § 1.

## Compiler's Note.

Revised Public Laws 1957, ch. 54, § 1 formerly compiled as this number has been transferred to § 21-32-1.

## Comparative Legislation.

Food, Drug and Cosmetic Act:  
Conn. Gen. Stat. 1958, §§ 19-211—19-239.

21-31-2. Definitions.—For the purpose of this chapter

(a) The term "director" means the director of health of the state of Rhode Island.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect

the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts or accessories.

(e) The term "device" (except when used in paragraph (k) of this section and in §§ 21-31-3 (j), 21-31-11 (f), 21-31-15 (c) and 21-31-18 (c) ) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetics" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(g) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with

respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(o) The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "federal act" means the federal food, drug and cosmetic act (title 21 U.S.C. 301 et seq.; 52 stat. 1040 et seq.).

(r) The term "patient" means, as the case may be (1) the individual medically requiring a drug, for whom a drug is prescribed; or (2) the owner or the agent of the owner of an animal medically requiring a drug, for which a drug is prescribed.

(s) The term "practitioner" means a person authorized by law to

practice medicine, dentistry, osteopathy, chiropody, or veterinary medicine in this state.

(t) The term "pharmacist" means a person duly registered with the board of pharmacy as a compounder, dispenser, or supplier of drugs upon prescription, including registered assistant pharmacists as defined by law.

(u) The term "prescription" means an order, issued in good faith in the course of professional practice only, by a practitioner to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, directions for the use of such drug, and the signature of such practitioner; provided, that such prescription received by word of mouth, telephone, telegraph or other means of communication shall be reduced promptly to writing by the pharmacist in the form prescribed in this subsection, and the record so made shall constitute the original prescription to be filed and preserved by the pharmacist; and, provided, further, that any refill authorization received by word of mouth, telephone, telegraph or other means of communication shall be reduced promptly to writing by the pharmacist, with the date thereof, on the face or on the reverse side of the original prescription.

(v) A "pharmacy" shall be considered to mean a place where drugs, medicines or poisons are sold at retail or where prescriptions of physicians, dentists, veterinarians, and other practitioners authorized to issue prescriptions for drug, medicines and poisons are compounded, dispensed, supplied or sold.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

formerly compiled as this number has been transferred to § 21-32-2.

**Compiler's Notes.**

Revised Public Laws 1957, ch. 54, § 2

The federal food, drug and cosmetic act referred to in this section may be found in F. C. A. tit. 21, § 301 et seq.

**21-31-3. Prohibited acts.**—The following acts and the causing thereof within the state of Rhode Island are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of §§ 21-31-12 or 21-31-16.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by § 21-31-21.

(g) The giving of a guaranty of undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of Rhode Island from whom he received in good faith the food, drug, device, or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of § 21-31-6.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that any application with respect to such drug is effective under § 21-31-16, or that such drug complies with the provisions of such section.

(l) 1. No person shall possess any habit-forming, toxic, harmful or new drug subject to § 21-31-15 (k) (1) unless the possession of such drug has been obtained by a valid prescription of a practitioner licensed by law to administer such drugs; provided, that the provisions of this subsection shall not be applicable to the delivery of such drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or to the possession of such drugs by such persons or their agents or employees for such use; pharmacists; practitioners; persons who procure such drugs for disposition by or under the supervision of pharmacists or practitioners employed by them or for the purpose of lawful research, teaching, or testing, and not for resale; hospitals or other institutions which procure such drugs for lawful administration by practitioners; officers or employees of federal, state, or local govern-



ments; manufacturers and wholesalers lawfully engaged in selling such drugs to authorized persons; and common carriers and warehousemen while engaged in lawfully transporting or storing such drugs for authorized persons.

2. The possession of a drug under paragraph (1) of subsection "1" of this section not properly labeled to indicate that possession is by a valid prescription of a practitioner licensed by law to administer such drug by any person not exempted under this chapter shall be prima facie evidence that such possession is unlawful; provided, that the provisions of this paragraph shall not be applicable where a portion of the whole amount of a drug lawfully obtained under the provisions of this chapter not in excess of an amount sufficient to meet the medical requirements of the patient in any twenty-four (24) consecutive hours as indicated in the directions for use by the practitioner prescribing or dispensing such drug, is possessed in a container to suit the convenience of the patient.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-4. Injunctions authorized.**—In addition to the remedies hereinafter provided the director of health is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 21-31-3; irrespective of whether or not there exists an adequate remedy at law.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**Rules of Court.**

For procedure for injunction, see Civil Procedure Rule 65.

**21-31-5. Violations of act—Penalty—Exceptions.**—(a) Any person who violates any of the provisions of § 21-31-3 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six (6) months or a fine of not more than five hundred dollars (\$500) or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one (1) year or a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated § 21-31-3 (a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of Rhode

Island from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the director of health to furnish the director of health the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Rhode Island who causes him to disseminate such advertisement.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-6. Embargoed articles—Condemnation and destruction.—**

(a) Whenever a duly authorized agent of the director of health finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the proper judge of the court in whose jurisdiction the article is detained or embargoed for a [libel] for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing



of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the director of health. The expense of such supervision shall be paid by the claimant. Such article shall be returned to the claimant of the article on representation to the court by the director of health that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

(d) Whenever the director of health or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or [contain] any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the director of health or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**Compiler's Note.**

Bracketed words "libel" and "contain" substituted for the words "label" and "cantain" respectively.

**21-31-7. Violations reported to attorney general—Notice and hearing on violation.**—It shall be the duty of the attorney general to whom the director of health reports any violation of this chapter, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this chapter is reported to the attorney general for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the director of health or its designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-8. Notice of minor violations—Warnings.**—Nothing in this chapter shall be construed as requiring the director of health to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the director of health believes

that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-9. Promulgation of reasonable standards by director.**—Whenever in the judgment of the director of health such action will promote honesty and fair dealing in the interest of consumers, the director of health shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director of health shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-10. Adulterated food.**—A food shall be deemed to be adulterated—

(a) 1. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or 2. if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 21-31-13; or 3. if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or 4. if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or 5. if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or 6. if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) 1. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or 2. if any substance has been

substituted wholly or in part therefor; or 3. if damage or inferiority has been concealed in any manner; or 4. if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is.

(c) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum (0.4%), harmless natural wax not in excess of four-tenths of one per centum (0.4%), harmless natural gum, and pectin; provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum ( $\frac{1}{2}\%$ ) by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-11. Misbranded food.**—A food shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by § 21-31-9; or if it is an imitation of another food that is not subject to subsection (g) of this section, unless its label bears in type of uniform size and prominence, the word, "imitation," and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form, unless it bears a label containing 1. the name and place of business of the manufacturer, packer, or distributor; 2. an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause 2. of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director of health.

(f) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and

understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 21-31-9, unless 1. it conforms to such definition and standard, and 2. its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as—

1. a food for which a standard of quality has been prescribed by regulations as provided by § 21-31-9 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

2. a food for which a standard or standards of fill of container have been prescribed by regulation as provided by § 21-31-9, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving 1. the common or usual name of the food, if any there be, and 2. in case it is fabricated from two (2) or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings and colorings, without naming each; provided, that to the extent that compliance with the requirements of clause 2 of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director of health; provided, further, that the requirements of clause 2 of this paragraph shall not apply to any carbonated beverage, the ingredients of which have been fully and correctly disclosed, to the extent prescribed by clause 2, to the director of health in an affidavit.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the director of health determines to be, and by regulations prescribed, as necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that the extent that compliance with the require-

ments of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the director of health.

(1) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**Compiler's Note.**

The letter "1" in parentheses at the beginning of the last paragraph was substituted for the figure 1.

**21-31-12. Contamination of food with microorganisms—Suspension of permit—Inspection.**—(a) Whenever the director of health finds after investigation that the distribution in Rhode Island of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director of health as provided by such regulations.

(b) The director of health is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director of health shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the director of health shall have access to any factory or establishment, the operator of which holds a permit from the director of health for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be



ground for suspension of the permit until such access is freely given by the operator.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

21-31-13. Poisonous or deleterious substance—Regulations as to use.—Any poisonous or deleterious substance added to any food except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause 2 of § 21-31-10 (a); but when such substance is so required or cannot be so avoided, the director of health shall promulgate regulations limiting the quantity therein or thereon to such extent as the director of health finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause 2 of § 21-31-10 (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause 1, § 21-31-10 (a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the director of health shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

21-31-14. Adulterated drug or device.—A drug or device shall be deemed to be adulterated—

(a) 1. If it consists in whole or in part of any filthy, putrid, or decomposed substance; or 2. if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or 3. if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or 4. if it is a drug and it bears or contains, for purposes of coloring only a coal tar color other than one (1) from a batch certified under the authority of the federal act.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set

forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been 1. mixed or packed therewith so as to reduce its quality or strength; or 2. substituted wholly or in part therefor.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-15. Misbranded drug or device.**—A drug or device shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing 1. the name and place of business of the manufacturer, packer, or distributor; and 2. an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause 2 of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director of health.

(c) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.



(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the director of health after investigation, found to be, and by regulations under this chapter, designated as habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears 1: the common or usual name of the drug, if such there be; and 2. in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, anti-pyrine, atropine, hyoseine, hyoseyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that to the extent that compliance with the requirements of clause 2 of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the director of health.

(f) Unless its labeling bears 1. adequate directions for use; and 2. such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of clause 1 of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the director of health shall promulgate regulations exempting such drug or device from such requirements.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with a consent of the director of health. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a

homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia.

(h) If it has been found by the director of health to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the director of health shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the director of health shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) 1. If it is a drug and its container is so made, formed, or filled as to be misleading; or 2. if it is an imitation of another drug; or 3. if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(k) 1. A drug intended for use by man which

(a) is a habit forming drug to which section 21-31-15 (d) applies; or

(b) because of its toxicity or the potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(c) is limited by an effective application under § 21-31-16 to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only 1. upon a written prescription of a practitioner licensed by law to administer such drug, or 2. upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or 3. by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

2. The director of health may by regulation remove drugs subject to §§ 21-31-15 (4), 21-31-16 from the requirements of paragraph 1 of this subsection when such requirements are not necessary for the protection of the public health.

3. A drug which is subject to paragraph 1 of this subsection shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal law prohibits dispensing without prescription." A drug to which paragraph 1 of this subsection does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

4. No prescription for any of the drugs described above shall be refilled if marked "non-repeat" or "N.R."

(1) 1. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of [this section] except subsections (a), (i) and (k), and the packaging requirements of subsections (g) and (h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of paragraph 1 of subsection (k).

(2) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications stated in chapters 28, 29 and 30 of title 21.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**Compiler's Note.**

The bracketed words "this section" were substituted for the word and figure "section 15."

21-31-16. Sale of new drugs—Regulations and procedure—Exceptions.—(a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless 1. an application with respect thereto has become effective under section 505 of the federal act, or 2. when not subject to the federal act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the director of health an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use; (b) a full list of the

articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the director of health may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a) 2. shall become effective on the 60th day after the filing thereof, except that if the director of health finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply—

1. to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs provided the drug is plainly labeled "For investigational use only;" or

2. to a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act; or

3. to any drug which is licensed under the virus, serum, and toxin act of July 1, 1902 (U.S.C. 1934 ed. title 42, chap. 4).

(d) An order refusing to permit an application under this section to become effective may be revoked by the director of health.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**Compiler's Note.**

Title 42, chapter 4 of U. S. C. enacted July 1, 1902, referred to in this section,

was repealed by Acts July 1, 1944, ch. 373, § 611; Aug. 13, 1946, ch. 958, § 5; Feb. 28, 1948, ch. 83, § 9(b); July 30, 1956, ch. 779, § 3(b). Similar provisions are found in F. C. A., tit. 42, § 262.

**21-31-17. Adulterated cosmetics.**—A cosmetic shall be deemed to be adulterated—

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation

on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal act.

**History of Section.**

As enacted by P. L. 1939, ch. 56, § 1.

21-31-18. Misbranded cosmetics.—A cosmetic shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing 1. the name and place of business of the manufacturer, packer, or distributor; and 2. an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause 2 of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the director of health.

(c) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed or filled as to be misleading.

**History of Section.**

As enacted by P. L. 1939, ch. 56, § 1.



21-31-19. False advertising.—(a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that whenever the director of health determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director of health shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director of health may deem necessary in the interests of public health; provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe and efficacious.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

21-31-20. Regulations promulgated by director—Hearing—Notice.—(a) The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director of health. The director of health is hereby authorized to make the regulations promulgated under this chapter conform, in so far as practicable with those promulgated under the federal act.

(b) Hearings authorized or required by this chapter shall be conducted by the director of health or such officer, agent, or employee as the director of health may designate for the purpose:

(c) Before promulgating any regulations contemplated by §§ 21-31-9; 21-31-11 (j); 21-31-12; 21-31-15 (d), (f), (g), (h), and (k), or 21-31-19 (b), the director of health shall give appropriate notice of

the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the director of health (which date shall not be prior to 30 days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the director of health, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-21. Inspection of establishments.**—(a) The director of health or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse or other establishment, except as otherwise provided in paragraph (b) hereof, in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose:

(1) of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated, and

(2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the director of health to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

(b) The director of health, the food and drug control administrator, the members of the state board of pharmacy and the pharmacy inspectors and the narcotics inspectors in the department of health shall make the inspections and secure the samples of specimens and enforce the provisions of this chapter as the same applies to pharmacies.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-22. Publication of court orders, judgments and decrees—Dissemination of information.**—(a) The director of health may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.



(b) The director of health may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics that the director of health deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the director of health from collection, reporting, and illustrating the results of the investigations of the director of health.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

**21-31-23. Severability of provisions.**—If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

**History of Section.**

As enacted by P. L. 1959, ch. 56, § 1.

## CHAPTER 32—ADVERTISING OF RHODE ISLAND PRODUCTS

**SECTION.**

**21-32-1. Advertising of Rhode Island grown farm products, eggs, poultry and turkeys produced in this state.**

**SECTION.**

**21-32-2. Enforcement—Penalty.**

**21-32-1. Advertising of Rhode Island grown farm products, eggs, poultry and turkeys produced in this state.**—Only farm products grown and eggs, poultry and turkeys produced in Rhode Island shall be advertised or sold in Rhode Island as “native,” “native grown,” “Rhode Island grown,” or under terms of similar import. Any person, firm, partnership or corporation advertising farm products as “native,” “native grown” or “Rhode Island grown” shall be required to furnish proof that such products were grown or produced in Rhode Island if requested so to do by the director of agriculture and conservation.

**History of Section.**

R. P. L. 1957, ch. 54, § 1.

§§ 21-31-1—21-31-23 by ch. 56 of Public Laws of 1959, these sections have been transferred to §§ 21-32-1, 21-32-2.

**Compiler's Note.**

This and the following section were formerly compiled as §§ 21-31-1, 21-31-2, however, because of the enactment of

**Comparative Legislation.**

Advertising state products:  
Conn. Gen. Stat., § 22-38.

**21-32-2. Enforcement—Penalty.**—The director of agriculture and conservation shall enforce this chapter. Any person who violates any

provision of this chapter shall be fined not more than twenty-five dollars (\$25.00) for each violation.

History of Section.

R. P. L. 1957, ch. 54, § 2.

# State of Rhode Island and Providence Plantations

Department of State



Office of the Secretary of State

*I, PRIMO IACOBUCCI \_\_\_\_\_ First Deputy \_\_\_\_\_ Secretary of State  
of the State of Rhode Island and Providence Plantations  
hereby Certify that the foregoing is a true \_\_\_\_\_*

*copy of* Chapter 31 of the General Laws of 1956, as amended, entitled RHODE ISLAND FOOD, DRUGS AND COSMETICS ACT; the same being \_\_\_\_\_

taken from the records in this office and compared with the original Chapter 31 of the General Laws of 1956, as amended, and now remaining on file and of record in this office.

In Testimony Whereof, I have hereunto  
set my hand and affixed the seal  
of the State of Rhode Island, this  
eleventh day of

January A.D. 1968

*James F. Buckley*  
First Deputy Secretary of State.



R-6

# Standard Metropolitan Statistical Areas

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PREPARED BY THE OFFICE OF STATISTICAL STANDARDS  
EXECUTIVE OFFICE OF THE PRESIDENT / BUREAU OF THE BUDGET

1967

<i>Area title and definition</i>	<i>1960 population</i>
<b>PROVIDENCE-PAWTUCKET-WARWICK, R.I.- MASS.....</b>	<b>821, 101</b>
Rhode Island portion, 731,358	
Bristol County, 37,146	
<i>Barrington town</i>	<i>13, 826</i>
<i>Bristol town</i>	<i>14, 570</i>
<i>Warren town</i>	<i>8, 750</i>
Kent County (part), 111,450	
<i>Warwick city</i>	<i>68, 504</i>
<i>Coxentry town</i>	<i>15, 432</i>
<i>East Greenwich town</i>	<i>6, 100</i>
<i>West Warwick town</i>	<i>21, 414</i>
Newport County (part), 2,267	
<i>Jamestown town</i>	<i>2, 267</i>
Providence County (part), 558,074	
<i>Central Falls city</i>	<i>19, 858</i>
<i>Cranston city</i>	<i>66, 766</i>
<i>East Providence city</i>	<i>41, 955</i>
<i>Pawtucket city</i>	<i>81, 001</i>
<i>Providence city</i>	<i>207, 498</i>
<i>Woonsocket city</i>	<i>47, 080</i>
<i>Burrillville town</i>	<i>9, 119</i>
<i>Cumberland town</i>	<i>18, 792</i>
<i>Johnston town</i>	<i>17, 160</i>
<i>Lincoln town</i>	<i>13, 551</i>
<i>North Providence town</i>	<i>18, 220</i>
<i>North Smithfield town</i>	<i>7, 632</i>
<i>Smithfield town</i>	<i>9, 442</i>
Washington County (part), 22,421	
<i>Narragansett town</i>	<i>3, 444</i>
<i>North Kingstown town</i>	<i>18, 977</i>
Massachusetts portion, 89,743	
Bristol County (part), 55,247	
<i>Attleboro city</i>	<i>27, 118</i>
<i>North Attleborough town</i>	<i>14, 777</i>
<i>Rehoboth town</i>	<i>4, 953</i>
<i>Seekonk town</i>	<i>8, 399</i>
Norfolk County (part), 27,799	
<i>Bellingham town</i>	<i>6, 774</i>
<i>Franklin town</i>	<i>10, 530</i>
<i>Plainville town</i>	<i>3, 810</i>
<i>Wrentham town</i>	<i>6, 685</i>
Worcester County (part), 6,697	
<i>Blackstone town</i>	<i>5, 130</i>
<i>Millville town</i>	<i>1, 567</i>

Portland, Maine—Cumberland, Gorham, Scarborough, and Yarmouth towns in Cumberland County, Maine, *added* to area definition October 1963.

Providence-Pawtucket-Warwick, R.I.-Mass.—Pawtucket, *added* to area title August 1960; Burrillville town in Providence County, R.I., Narragansett town in Washington County, R.I., Coventry town in Kent County, R.I., and Jamestown town in Newport County, R.I., *added* to area definition June 1959; Rehoboth town in Bristol County, Mass., *added* to area definition October 1963. Warwick, *added* to area title October 1963.

Provo-Orem, Utah—New area, August 1960.

Reno, Nev.—New area, August 1960

Richmond, Va.—Hanover County, Va., *added* to area definition October 1963.

Rochester, N.Y.—Livingston, Orleans, and Wayne Counties, N.Y., *added* to area definition October 1963.

Rockford, Ill.—Boone County, Ill., *added* to area definition October 1963.

Sacramento, Calif.—Placer and Yolo Counties, Calif., *added* to area definition October 1963.

St. Louis, Mo.-Ill.—Jefferson County, Mo., *added* to area definition December 1958; Franklin County, Mo., *added* to area definition October 1963.

Salem, Oreg.—New area, October 1964.

Salinas-Monterey, Calif.—New area, April 1966.

Salt Lake City, Utah—Davis County, Utah, *added* to area definition October 1963.

San Antonio, Tex.—Guadalupe County, Tex., *added* to area definition October 1963.

San Bernardino-Riverside-Ontario, Calif.—Riverside and Ontario *added* to area title June 1953; Riverside County, Calif., *added* to area definition June 1953.

San Francisco-Oakland, Calif.—Solano County, Calif., *deleted* from area definition October 1963.

San Juan, P.R.—Rio Piedras Municipio *consolidated* with San Juan Municipio July 1951. Carolina and Trujillo Alto Municipios *added* to area definition October 1963.

Santa Barbara, Calif.—New area, November 1956.

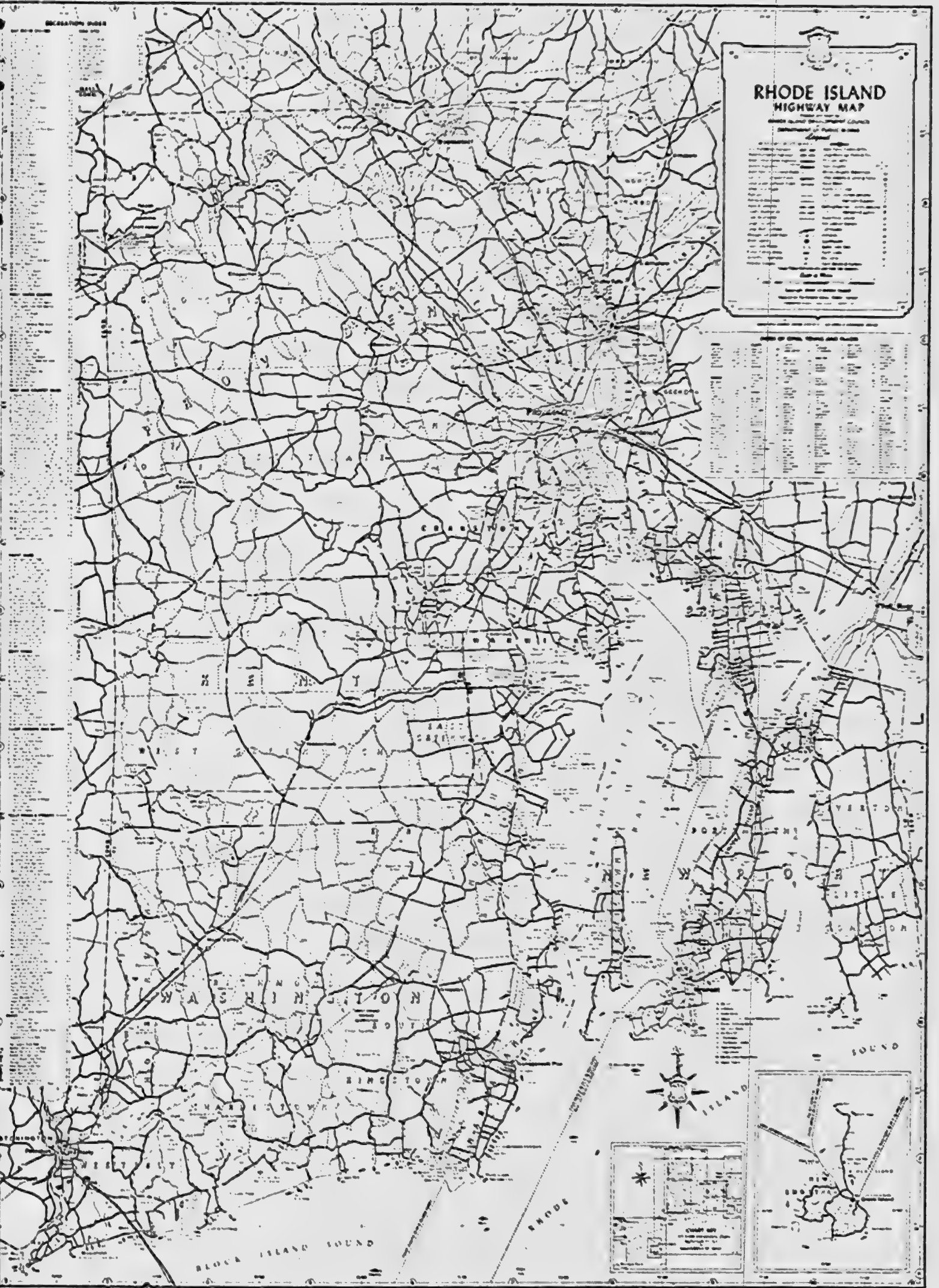
Seattle-Everett, Wash.—Snohomish County, Wash., *added* to area definition May 1959. Everett *added* to area title October 1963.

Sherman-Denison, Tex.—New area April 1967.

Shreveport, La.—Bossier Parish, La., *added* to area definition December 1953.

Sioux City, Iowa-Nebr.—Dakota County, Nebr., *added* to area definition October 1963.

South Bend, Ind.—Marshall County, Ind., *added* to area definition October 1963.





UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADAMS DRUG CO., INC.

Employer

and

LOCAL 1325, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

Petitioner

CASE NO. 1-RC-8949

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

The Employer is engaged in the operation of 83 retail drug stores located in the states of Rhode Island, Connecticut, Massachusetts, New York, Kansas, and Oklahoma where it is engaged in the sale of drugs and other merchandise. The Petitioner seeks to represent all full-time and regular part-time store clerks including sales girls, cosmeticians, fountain help, and stockmen employed at its 25 stores located in the state of Rhode Island. The Employer contends that a chain-wide unit is appropriate and in the alternative that an area unit consisting of its stores located in Rhode Island, Massachusetts, and Connecticut is appropriate. The record discloses that the Employer is a Rhode Island corporation and that 19 of its stores located in Rhode Island are separately incorporated but are wholly-owned subsidiaries of the Employer. There is no history of collective bargaining in any of the stores. The main office and warehouse of the Employer is located in Pawtucket, Rhode Island, and is the headquarters for the managerial hierarchy, including its officers, general supervisor, and seven area supervisors. The ordering and pricing of a vast majority of the goods sold in all 83 stores is accomplished by the Pawtucket office. Advertising policy is centrally determined and material in connection therewith originates from Pawtucket.

All of its Rhode Island stores operate under the trade name of Adams Drug Store with the exception of one located in Woonsocket, Rhode Island, which operates under the name of Brown-Adams Drug. In addition, 5 stores in Massachusetts are operated under the name of Adams Drug Store. All stores are serviced administratively by the central Pawtucket office which handles various record keeping functions for all stores in the chain. These records pertaining to personnel, payroll, Social Security deductions, etc., are maintained at this central location. The Employer uses its warehouse in Pawtucket to supply goods to all the stores in the chain and all purchasing is done through the Pawtucket office for this central warehouse. There are three area supervisors in charge of the stores in Rhode Island, Massachusetts, and Connecticut, none of whom have charge only of the Rhode Island stores. All personnel, wage and promotion policies emanate from the central Pawtucket office. The Employer maintains a single contributory health and accident plan for all full-time employees working in its Rhode Island, Massachusetts, and Connecticut stores, and all administrative work in connection with this plan is done through the Pawtucket office. There is a head cosmetician who supervises the activities of the cosmeticians in the stores located in Rhode Island, Massachusetts, and Connecticut. A uniform vacation policy, administered by the Pawtucket office, exists for employees in the Rhode Island, Massachusetts, Kansas, and Oklahoma stores. No vacation policy has been established as yet for the Connecticut stores. A commission

(continued on page 2)

policy for certain employees is handled uniformly throughout all 83 stores. The Employer utilizes the services of shopping services which make reports to this Pawtucket office on the conduct, demeanor, and work quality of the sales personnel in all stores throughout the chain. Transfers of stockmen from store to store are made and, when this is done in the Rhode Island stores, the transfers may be within Rhode Island or between stores located in Rhode Island, Massachusetts, and Connecticut. Such transfers occur infrequently and not with any regularity. Inventories are made at least annually, without regard to stores located in any particular state, under the direction of the area supervisor in charge of those stores and the head cosmetician. It is clear from the foregoing that there is lacking any community of interest among the employees in the Rhode Island stores only and that the Rhode Island stores alone do not comprise complete geographic or administrative division of the Employer's operations, such as would differentiate them from the remaining stores under the responsibility of an area supervisor or the remaining stores of the chain. Accordingly, as the Board will establish a single unit of separate appropriate units only where the amalgamated unit is coherent and sensible for collective bargaining from the standpoint of geographic consideration or the Employer's administrative or operational structure, it is found that a unit composed of the Rhode Island stores only is inappropriate. 1/ At the hearing, the Petitioner declined to participate in an election in any unit other than that sought in the petition. Accordingly, the petition is hereby dismissed. 2/

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

/s/ Albert J. Hoban

Dated June 16, 1966  
at Boston, Massachusetts

\_\_\_\_\_  
Regional Director, Region 1

1/ Weis Markets, Inc., 125 NLRB 148. See also State Farm Mutual Automobile Insurance Company, 158 NLRB No. 84.

2/ Since it is unnecessary for a disposition of the issues involved herein, no determination is made whether or not an area-wide unit or chain-wide unit is appropriate, or whether a smaller unit not sought herein would be appropriate. Nor is it decided whether clerks at the Employer's two post office substations or fountain managers at three of its stores should be included.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

\*\*\*\*\*

In the Matter of: \*

ADAMS DRUG CO., INC. \*

Employer \*

and \*

CASE NO. 1-RC-8949

RETAIL CLERKS INTERNATIONAL \*

ASSOCIATION, AFL-CIO, Local 1325 \*

Petitioner \*

\*\*\*\*\*

PETITIONER'S REQUEST FOR REVIEW

From the office of:  
Angoff, Goldman, Manning & Pyle  
44 School Street  
Boston, Massachusetts

### INTRODUCTORY STATEMENT

On April 25, 1966, Local 1325, Retail Clerks International Association, AFL-CIO, (hereinafter the "Union") filed a petition in which the Union sought to be certified as representative of the following-described unit of employees of Adams Drug Co., Inc., (hereinafter the "Company"):

"All the employees working in the Employer's Rhode Island Stores (25), excluding buyers, head bookkeepers, merchandizers, store managers, guards, supervisors and professional employees as defined in the Act."

Hearings were held on May 11 and 26, 1966 in Boston, Massachusetts before Robert C. Rosemere, Esq., Hearing Officer. Evidence was submitted in respect to the determination of a unit appropriate for purposes of collective bargaining and the supervisory status of certain classes of employees employed by Adams Drug Co., Inc. in its Rhode Island Stores.

On June 16, 1966, the Regional Director for the First Region issued his Decision and Order in which he found "that a unit composed of the Rhode Island Stores only is inappropriate". The petition was thereafter dismissed.

Pursuant to Section 102.67(b) of the Rules and Regulations of the National Labor Relations Board, as amended, the Petitioner hereby requests review of the Decision and Order of the Regional Director.

### STATEMENT OF FACTS

Adams Drug Co., Inc, a Rhode Island corporation, is engaged in the operation of a chain of retail and discount drug stores located in Rhode Island (25), Massachusetts (13), Connecticut (7), New York (24), Kansas (4) and Oklahoma (11). The stores are commonly owned and operated by Adams, either as part of Adams Drug Co., Inc, or as wholly-owned subsidiaries of Adams Drug Co., Inc.

In Rhode Island, all twenty-five Company stores use the trade name Adams Drug Stores; only six other stores in the entire chain use that name. (Petitioner's Exhibit 1).

The officers and directors for each of the corporations are the same. The parent Company maintains its offices in Pawtucket, Rhode Island. Bookkeeping functions are handled at this central office on a chainwide basis; personnel records are also kept there.

A central warehouse, located in Pawtucket, Rhode Island, supplies the majority of drug items sold throughout the chain. Items not carried or out of stock in the warehouse are purchased by individual stores from local area wholesale jobbers.

Beneath the officers and directors of the Company, the supervisory hierarchy is composed of Area Supervisors and Store Managers.<sup>1</sup> There are approximately eight Area Supervisors throughout the system. Each Supervisor is assigned to a number of stores to which he thereafter makes periodic visits. The Company witness testified that stores are assigned to a particular Supervisor without regard to any geographical or administrative division within the Company.

Each store has a Manager who is either a pharmacist or a non-pharmacist. His authority and responsibility are confined to the particular store to which he is assigned. The Regional Director ruled that all the pharmacists in the Company's Rhode Island stores are Supervisors within the meaning of the Act. (Case No. 1-RC-8507, unpublished 1965).

The bargaining unit personnel (primarily women) are hired by their respective store Managers, although stockmen are generally hired by an Area Supervisor. There is no general wage policy for

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1. There are other satellite personnel who may be supervisors, but they are not involved with in-store supervision and hence are not relevant here.



new employees, except the applicable state minimum wage law. Similarly, there is no policy with respect to fringe benefits with two exceptions: Vacation policy is the same only for all store personnel in Rhode Island. There is a voluntary Blue Shield and Physician's Service Plan open to employees in Rhode Island, Massachusetts and Connecticut, but the extent of employee participation is unknown.

In Rhode Island there are a total of 277 bargaining employees in the Company's twenty-five stores. (Petitioner's Exhibit 9). In Connecticut there are seven stores employing 175 clerks of whom only 48 are full time employees. (Petitioner's Exhibit 11). Only 12 of the Company's 13 stores in Massachusetts are drug stores. They employ 138 clerks but only 39 of them are full time. (Petitioner's Exhibit 10). There are twice as many full time clerks in the Rhode Island stores as in Massachusetts.

There is no interchange of clerks between one State and any other State. There is no interstate contact between employees of one State and employees in another State.

State laws peculiar to the State of Rhode Island regulate almost every phase of the stores' operation. (See generally Chapter 19, Rhode Island General Laws). These laws do not, of course, control the operations of the Company's stores in Massachusetts or Connecticut. Sales taxes and payroll tax records are kept on a state-wide basis for the Rhode Island stores. Workmen's compensation and employment security records are likewise maintained for all Rhode Island stores. Every store operated by the Company in Rhode Island is a pharmacy. This is not true with respect to the Company's stores in Connecticut and Massachusetts.

## ARGUMENT

### A. Introduction

The retail drug industry is characterized by large numbers of installations, each limited by the nature of the selling process to service in a local area. The number of employees at each store is likely to be small; the distance between locations, considerable. Typically, there is a centralized administrative structure coupled with a degree of local store autonomy. The Employer in the instant petition clearly fits this industry pattern.

Disputes concerning the proper geographic scope of bargaining units in the retail industry have in recent years called for an increasingly large portion of the attention of the National Labor Relations Board. These disputes reflect the problems of union organizational efforts in the retail industry.<sup>2</sup> (a) union success may turn on the choice between a small and a large unit, and (b) choice of an election unit may also determine whether employees are to be represented by any labor organization at all. The Board now clearly recognizes the importance of the consequences that flow from a determination of the election unit. See: P. Ballantine & Sons, 141 NLRB 1103 (1963). The Supreme Court's holding in N.L.R.B. v. Metropolitan Life Ins. Co. 380 U.S. 438 (1965) that extent of organization is a permissible factor in the choice of an appropriate unit gives approval to the Board's position that it need not be strictly neutral in respect to organizational considerations.

2. And in other industries at the periphery of organized labor, such as the insurance industry. See Note, The Board and Section 9(c)(5): Multilocation and Single Location Bargaining Units in the Insurance and Retail Industries, 79 Harv. L. Rev. 811, 812 (1966)



Public policy need only require that the Board's "appropriate unit" have that minimum coherence and identity necessary to ensure that collective bargaining can be at least viable with respect to that unit alone. Thus, the Board has often held that it is not limited to directing an election in the most appropriate unit, but can grant a petition for any unit that it deems to meet certain requirements so as to be "an" appropriate one. See, e.g. N.L.R.B. v. Smith, 209 F.2d. 905 (5th Cir. 1954); Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950).

In cases involving only one petitioning union the Board has tended to focus its attention on the petition alone and to grant it if, in addition to organizational factors, there is some objective support showing a well-delineated and coherent group of employees within the proposed unit. See Hudson Hosiery Co., 74 N.L.R.B. 250, 252 (1947).

The Union submits that the State-wide unit petitioned for is coherent and sensible for collective bargaining from the standpoint of the regulated operations of the Employer's Rhode Island Stores.

B. Relevance Of Geographic Area  
In A Regulated Industry.

The Board has often determined that State-wide units are appropriate for purposes of collective bargaining. E.G. Metropolitan Life Ins. Co. 43 NLRB 962 (1942); Farmers Ins. Group, 143 NLRB 240 (1963).

In the earlier decisions the Board concluded that "the rapid growth of union organization among insurance agents makes it clearly appear that provisional units less than State-wide in scope are, under ordinary circumstances, unnecessary to make collective bargaining reasonably possible for them if they desire it." Metropolitan Life Ins. Co. 56 NLRB 1635, 1640 (1944).<sup>3</sup> In that case the Board

<sup>3</sup> That policy decision was not based upon the Union's extent of organization; the Union's petition for a smaller unit in that case was dismissed.

ruled that the appropriate unit included only the 41 district offices located in Ohio, although each of those offices was under the supervision and control of the superintendent of agencies for a single administrative division which included all 67 district offices in the tri-state region of Indiana, West Virginia and Ohio. <sup>4</sup> The rationale for that decision appears to lie in the high degree of state regulation of the industry involved. The operations of an insurance company within each state is regulated by a Commissioner of Insurance. (See. e.g. Chapter 175, Massachusetts General Laws, Section 3A.) The right to do business in a particular state and the manner in which it is done are subject to extensive legislation. The scope of this state regulation is of sufficient magnitude to support a unit coextensive with the reach of those laws - the geopolitical boundaries of the state.

In the very same manner the retail drug industry is controlled and regulated by state law. Each state involved in the case at bar has a regulatory commission, generally termed the State Board of Pharmacy. (See: e.g. Chapter 19, Rhode Island General Laws, Section 5-19-2). The power of the Board is great and the drug industry is highly regulated because of its direct affect on the health and safety of the state's residents. The various Boards and the state laws they administer have a close and intimate relationship to the operations of the Employer in the instant petition. Thus, in Massachusetts, the Employer was not permitted to open a drug store because the State Board of Pharmacy refused to issue it a license to operate a pharmacy.

4. Almost 20 years later, the Board retreated from this decision because it operated to impede the development of organization. Quaker City Life Ins. Co., 134 NLRB 960 (1961), (representation), 138 NLRB 61 (1962), (unfair labor practice), enforced in part 319 F.2d. 690 (4th Cir. 1963). The legality of state-wide units was not challenged in Quaker City however; the decision merely reflected the Board's expanding recognition of the consequences that flow from the determination of the election unit.

The retail drug industry is clearly different from other, non-regulated retail chainstore operations. The various Boards of Pharmacy control the right to exist and regulate the manner of daily operation. This state-wide control of the retail drug industry should be reflected in the choice of an appropriate unit. The absence of decisions on that question is a function of either the failure of a union to petition for a state-wide unit or the apparent preference of the Board for single store units in the retail industry.

Prior to 1962 the Board had generally insisted that a proposed retail unit coincide with an administrative subdivision (e.g. Weis Mkts. Inc., 125 NLRB 148 (1959) ), or with a geographic area, (E.g. Dow Drug Co., Inc., 127 NLRB 1316 (1960) ). The Board departed from that policy in Sav-On Drugs, Inc., 138 NLRB 1032 (1962) approving a unit of a single retail drug store. The rationale was essentially that used in Quaker City: the former policy had impeded union organization. In Weis Mkts., 142 NLRB 708, 710 (1963), the Board explained that its holding in Sav-On Drugs only

"... added the possibility ... that a single location or grouping other than an administrative or geographical area may be appropriate. The fact that the unit sought would include all employees within such an area has been and continues to be one of the criteria to which the Board looks as a part of its general unit policy."

The current validity of a state-wide unit cannot be doubted. See State Farm Mutual Automobile Ins. Co., 158 NLRB No. 84 (1966) ( a unit in a "clearly-delimited geographic area, the State of New York", is appropriate). The continued relevance of geographic area as a criterion for multilocation unit appropriateness is magnified in the case at bar - because of the extensive state regulation and control of the retail drug industry.

C. Organizational Factors And The State-Wide Unit.

In grouping employees into bargaining units, the Board has given great weight to the declared purpose of the Act to encourage collective bargaining. That purpose leads the Board to search for indications of the kind of unit which will give employees the greatest strength in negotiations with their Employer. One significant illustration is Matter of Shipowners' Assoc. of the Pacific Coast, 7 NLRB 1002 (1938), a case in which the Board held that one coast-wide unit of longshoremen was appropriate rather than a number of separate port units because "the failure of the longshoremen to achieve any satisfactory collective bargaining agreements when the bargaining was on a local scale ... contrasted with the highly successful collective bargaining achievements when the longshoremen bargained as a coast unit."

Organizational considerations/<sup>are</sup> relevant in the unit choice where, as here, the Union is seeking a unit in a clearly delimited geographic area, the State of Rhode Island. Single location units in Rhode Island would subject the Union (as well as the Employer) to multiple elections and negotiations. The resultant units would be too small for efficient collective bargaining and too small to permit negotiations on issues subject to effective negotiation only in a wider unit.

Since the Employer could not be required to combine negotiations for all 25 Rhode Island units, the Union would be forced to establish 25 different, separately negotiated contracts. The Union - and the employees it represents - would be faced with this needlessly expensive and time consuming task. And it would face this task knowing that each separate contract it signed decreased its power to effectively negotiate for the remaining units. A related objection to single-location units in the case at bar is based on the centralized administrative structure of the Employer. The authority of the store manager

is greatly circumscribed; his limited authority does not make a workable collective bargaining agreement for that location possible. Moreover, because of the turnover of employees in a single location, a change of merely one or two employees could result in a decertification election at a single location. And finally, small units make it easier for a hostile employer to obstruct the Union by coercive and threatening tactics too subtle to be readily detected.

On the other hand, multilocation bargaining has tended to promote stability and responsibility in bargaining and a multilocation unit ensures multilocation bargaining from the beginning. The Union's proposed grouping of stores is not a "gerrymander" designed to minimize employee free choice. In view of the state-wide regulation of the retail drug industry and the lack of authority of a store manager in respect to labor relations policy, a state-wide unit would be appropriate and bargaining, effective.

D. Nonorganizational Factors And  
The State-Wide Unit.

The state-wide unit possesses that minimum coherence and identity necessary to ensure that collective bargaining can be viable with respect to that unit alone.

Beneath the officers and directors of Adams Drug Co., Inc. (and its wholly-owned subsidiaries) the supervisory hierarchy is composed of Area Supervisors and Store Managers.<sup>5</sup> There are approximately eight Area Supervisors throughout the system. Each Supervisor is assigned to a number of stores to which he thereafter makes periodic visits. The Company witness testified that stores are assigned to a particular Supervisor without regard to any geographical or admin-

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5. There are other satellite personnel who may be supervisory or managerial employees, but they are not involved with in-store supervision and hence are not relevant here.



administrative basis within the Company. Stores are assigned and transferred from the jurisdiction of one Supervisor to another on an ad hoc basis, with regard primarily to their respective work load. Presently, a Company Supervisor, one Seltzer, services all the Company's Connecticut stores; no other Area Supervisor covers that State. Area Supervisor Ernest Fink oversees only one Rhode Island store. Area Supervisor Dillenbach covers only 2 Massachusetts stores; Supervisor Dane, four. (Tr. 51-54).

It is accurate to conclude that no defined administrative areas exist within the Company's Eastern operations composed of New York, Connecticut, Rhode Island and Massachusetts.

Each store in Rhode Island has a Manager who is either a pharmacist or a non-pharmacist. His authority and responsibility are confined to the particular store to which he is assigned. All pharmacists in the Company's Rhode Island store have been ruled to be Supervisors within the meaning of the Act. (Case No. 1-RC-8507, unpublished 1965).

The bargaining unit personnel are hired by the respective store Manager, although stockmen are generally hired by an Area Supervisor. There is no general wage policy for new employees, except the applicable state minimum wage law. (See e.g. Chapter 151, Massachusetts General Laws). Similarly, there is no common policy with respect to any fringe benefit with two exceptions: (1) Vacation policy is uniform for all store personnel in Rhode Island; (2) There is a voluntary Blue Shield Plan open to full time employees in Rhode Island, Massachusetts and Connecticut.

Bargaining unit personnel are hired from the local labor market - the area served by a single store. As a consequence there is no interstate interchange of employees. Such interchange as does occur is confined within the particular state and generally, a particular

urban area within that state. The Board has granted multilocation units in the retail field despite apparently minimal interchange. E.g. Spartan Dept. Stores, 140 NLRB 608 (1963) and the Board has approved a chainwide unit covering stores in several cities within a state. Meijer Supermkts, Inc. 142 N.L.R.B. 513 (1963).

In apparent recognition of the separate consumer market area, the Rhode Island Stores are treated as a single group for advertising purposes. In the newspaper advertisements of all Rhode Island stores are set forth in the same size and type of print. In addition, the name of the pharmacist who has registered the particular Rhode Island store is printed in the advertisement. This is not true for the Company's stores in New York, Massachusetts or Connecticut. The Rhode Island stores are not advertised in any out-of-state newspapers. Every store in Rhode Island operated under the trade name of Adams Drug Store. Only 5 other stores in the entire chain share that name. Prescription labels bearing the name Adams Drug Co. are printed only for the Rhode Island stores.

In addition to the regulatory laws specifically governing the operations of Rhode Island drug stores (see generally Chapter 19, Rhode Island General Laws) there are also specific Workmen's Compensation statutes, sales tax laws and laws regulating the hours and conditions of work for women. Almost all bargaining unit personnel are females. In Massachusetts, Connecticut and New York there are, of course, different statutory requirements to be met. In as strictly a state regulated industry as pharmacy, there statutes alone might well preclude the appropriateness of a unit larger than the State of Rhode Island.

Even assuming arguendo that a larger than state-wide unit of clerks might be appropriate, the Petitioner is still not foreclosed from seeking a single unit of all Rhode Island stores. Thus, in Sanborn Telephone Co., 140 NLRB 512, 514, the Board stated.



"Although the broader unit alleged to be appropriate by the Employer might be appropriate, it is not the only appropriate unit, and this fact does not preclude a finding that the unit here requested which is lesser in scope, is also appropriate for the purposes of collective bargaining. It is not Board policy to compel labor organizations to represent the most comprehensive grouping. In the instant case, there is no history of collective bargaining on a broader basis, and no labor organization seeks to represent these employees in a more comprehensive unit".

It might also be contended that Sav-On Drugs, Inc., 138 N.L.R.B. 1032, requires a finding that a smaller than state-wide unit is appropriate. Petitioner submits that the evidence presented in the instant case precludes such a finding. The Company's Rhode Island stores bear a common business name - Adams Drug Store; common prescription labels; common advertising; common vacation policy; common wholesale jobbers and suppliers; common drug and prescription pricing, and common state law regulation. The salary of clerks employed by the Company is also determined, in part, by the state in which they work.

A comparison between these facts and the decision of the Board in Sav-On Drugs, supra, demonstrates that single store units would not be appropriate in the instant case.

The stores in Sav On Drug were separated by distances ranging up to 65 miles and were located in two states; store managers decided when and how to advertise, and there was no central warehouse or purchasing.

In addition, the petitioning labor organization had not sought to organize the employees on a state-wide basis. The facts in the case at bar are, of course, distinguishable from those presented in Sav-On Drugs. Of special significance are the degree of contralized

management and control exercised over all the Rhode Island stores and the common working conditions and regulatory laws in Rhode Island.

CONCLUSION

The unit petitioned for is appropriate for purposes of collective bargaining.


Respectfully submitted,  
Angoff, Goldman, Manning & Pyle

  
Stephen R. Domesick

CERTIFICATE OF SERVICE

I, Stephen R. Domesick, Esq., do hereby affirm that copies of the within Petitioner's Request for Review have been mailed to each of the parties listed below, by certified mail, return request requested, on the same day the Petitioner's Request for Review was mailed to the National Labor Relations Board, Washington, D. C., on July 7, 1966.

Albert J. Hoban, Regional Director  
National Labor Relations Board  
J. F. Kennedy Federal Building  
Government Center  
Boston, Massachusetts

  
Stephen R. Domesick

William J. Sheehan, Esq.  
530 Hospital Trust Building  
Providence, Rhode Island

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the matter of:

ADAMS DRUG CO., INC.  
Employer

and

CASE NO. 1-RC-8949

RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO, Local 1325  
Petitioner

EMPLOYER'S STATEMENT IN OPPOSITION TO  
PETITIONER'S REQUEST FOR REVIEW

The Petitioner in its request for review does not set out which one of the four grounds for review as set forth in Section 102.67 of the Boards Rules and Regulations, it relies on. In fact it would appear from the request that the Petitioner's position merely is that it disagrees with the Regional Director's decision and that it should be overturned.

The Petitioner has made several misstatements of fact, presumably because it did not have the transcript before it when preparing its request for review. Examples of the misstatements of fact are as follows:

- (1) On page 2 of its request, the Petitioner stated that all 25 stores of the employer in the State of Rhode Island use the same trade name. This is obviously incorrect, as Petitioner's Exhibit 1 shows that store 28 in Woonsocket, Rhode Island uses another trade name than Adams Drug Stores.
- (2) On page 3 and again on page 12, it would appear that the Petitioner claims a common vacation policy exists only in the Rhode Island stores of the employer. This is obviously incorrect, as the same policy applies to substantially all of the Massachusetts stores. T44

- (3) On page 3 the Petitioner seeks to have the inference drawn that the Blue Cross and Physician's Service Plan provided by the employer for employees in its Rhode Island, Massachusetts, and Connecticut stores is somewhat less than wholeheartedly participated in by the employees of the employers. Such an inference, as the employer pointed out in the record, would be ridiculous, since this is a plan provided at no cost to the employees.
- (4) On page 3 the Petitioner also states that Chapter 19, Rhode Island General Laws, which is a meaningless citation, regulates almost every phase of the stores' operations in the State of Rhode Island. The laws of the State of Rhode Island, insofar as the operation of pharmacies are concerned, apply only to the dispensing of drugs by pharmacists. They do not apply to the multitude of other retail operations of drug stores, any more than they apply to a supermarket. The Petitioner is seeking to represent store clerical employees, not pharmacists. Store clerical employees have nothing to do with the dispensing of drugs. Therefore, there are no facts of the law applying to the operation of pharmacies in the State of Rhode Island that would have any effect upon the duties or working conditions of a clerical employee in that state.
- (5) On page 11 the Petitioner states that Rhode Island stores are not advertised in any out of state newspapers. This is incorrect, as certain Massachusetts stores are advertised in Rhode Island newspapers and certain Rhode Island stores are advertised in Massachusetts newspapers. T149-151 and 87-89
- (6) On the same page the Petitioner states prescription labels bearing the name Adams Drug Company are printed only for the Rhode Island stores. This is incorrect, since that label is not printed for one Rhode Island store, but is printed for six stores located in Massachusetts. T40

(7) On page 12 the Petitioner states that in Rhode Island there are common wholesale jobbers and suppliers of the Company stores, the inference being that these suppliers do not supply stores in other states. This is incorrect, as the common jobbers and suppliers of the Rhode Island stores also are suppliers of the Company stores in either Massachusetts or Connecticut. T164-165

(8) On the same page the Petitioner alludes to common drug and prescription prices in Rhode Island stores. However, the same pricing is carried throughout the entire six-state operation of the Employer. T67

Incorporated as a part of this Statement of Opposition is a copy of Memorandum Brief Submitted on Behalf of the Employer, which is attached and which <sup>was</sup> served upon the Regional Director and Counsel for the Petitioner after the close of the hearing in this matter.

Respectfully Submitted,  
Adams Drug Co., Inc.  
By its attorneys

*Adler, Pollock & Sheehan*  
*Sheehan*

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADAMS DRUG CO., INC.

and

LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION,  
AFL-CIO

Case No. 1-CA-6084

RESPONDENT'S EXCEPTIONS TO THE TRIAL EXAMINER'S DECISION  
AND CERTAIN RULINGS MADE IN THE COURSE OF HEARING

The Respondent excepts to the following findings of fact and conclusions of law of the Trial Examiner in his Decision:

1. That the appropriateness of a bargaining unit or a Board certification will not be relitigated in a subsequent unfair labor practice proceeding. P. 5, L. 35-38.

2. That the issues raised by the Respondent's Objections to Election could not be litigated in this proceeding. P. 5, L. 39.

3. That the Union's Request for Review of the initial dismissal of the petition in the representation case could not be litigated in this proceeding on the issue that it failed to set forth a ground contained in Section 102.67 (c) of the Board's Rules and Regulations. P. 6, L. 3-4.

4. That the issue of the defectiveness of the Board's Decision on Review as shown on its face could not be litigated in this proceeding. P. 5, L. 4-5.

5. That the evidence in the record does not sustain the claim of error on the part of the Board in directing an election in a unit which included the Middletown and Westerly, Rhode Island, stores, which were outside of the Metropolitan Statistical Area relied upon by the Board. P. 6, L. 40-43.



6. The implication that there was a duty on the part of the Respondent to bring to the Board's attention the opening of these two stores prior to the Board's decision in view of the record, particularly the unit sought therein, before the Board issued its decision in the representation case. P. 7, L. 5-15.

7. That the Board found a statewide unit appropriate despite the fact that all Respondent's Rhode Island stores in the record before it were in the same metropolitan area rather than because of that fact. P. 8, L. 18-21.

8. That the issue of state regulation of the retail drug industry in the State of Rhode Island was previously litigated. P. 8, L. 29.

9. That the Trial Examiner was precluded from consideration of this issue. P. 8, L. 29.

10. That any evidence was elicited concerning state regulations of pharmacies at the representation case hearing. P. 8, L. 31-32.

11. That the Petitioner in the representation case, the Charging Party here, set forth in its Request for Review of the Regional Director's dismissal of the representation proceeding as to state regulation of the retail drug industry a citation of the statutory law of Rhode Island. P. 8, L. 32-37.

12. That issue was joined in the representation proceeding as to the nature of state regulation of retail drugstores and its impact upon the appropriateness of the unit. P. 8, L. 41-45.

13. That Respondent failed to establish any changed circumstances sufficient to warrant rejection of the Board's unit finding. P. 9, L. 5-7.

14. That the following employees of Respondent constitute



an appropriate unit for collective bargaining within the meaning of the Act:

All full-time and regular part-time employees employed at the Respondent's drugstores located in the State of Rhode Island, including post office substation employees but excluding pharmacists, store managers and assistant managers, guards, and all other supervisors as defined in the Act.

P. 9, L. 12-17.

15. That Respondent has refused to bargain with the Union in violation of Section 8 (a) 5 and 1 of the Act. P. 9, L. 23-24.

16. That the activities of the Respondent tend to lead to labor disputes, burdening and obstructing commerce and the free flow thereof. P. 9, L. 31-32.

17. The conclusion of law that the unit described in Paragraph 14 above constitutes a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act. P. 9, L. 50-55.

18. The conclusion of law that at all times since July 18, 1967, the Charging Party has been and is now the exclusive representative of the employees described in Paragraph 14 above for the purpose of collective bargaining within the meaning of the Act. P. 10, L. 1-4.

19. The conclusion of law that by refusing to bargain with the Charging Party as the representative of such employees since September 19, 1967, it has engaged in unfair labor practices within the meaning of Sections 8 (a) 5 and 1 and 2 (6) and (7) of the Act. P. 10, L. 6-10.

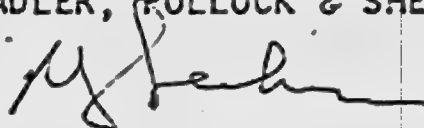
20. That the Trial Examiner erred in sustaining the objection of the Charging Party to the line of questions put to witness Arthur Sousa concerning certain matters having to do with



the objections of the election filed by the Respondent in the representation case. T. 41-43.

ADAMS DRUG CO., INC.

By its Attorneys,  
ADLER, POLLOCK & SHEEHAN

A handwritten signature in dark ink, appearing to read 'W. J. Sheehan', is written over the printed name below.

WILLIAM J. SHEEHAN

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**In the  
UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT.**

No. 21,938.

**LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION, AFL-CIO,  
PETITIONER,**

**v.**

**NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT.**

**ON PETITION TO REVIEW AND MODIFY AN ORDER OF THE NATIONAL  
LABOR RELATIONS BOARD.**

**BRIEF FOR LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION, AFL-CIO.**

**ANGOFF, GOLDMAN, MANNING & PYLE,  
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**United States Court of Appeals  
for the District of Columbia Circuit**

**FILED NOV 12 1968**

*Nathan J. Paulson*  
**CLERK**

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**In the**  
**UNITED STATES COURT OF APPEALS FOR**  
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PETITIONER,  
*v.*  
NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT.

ON PETITION TO REVIEW AND MODIFY AN ORDER OF THE NATIONAL  
LABOR RELATIONS BOARD.

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BRIEF FOR LOCAL 1325, RETAIL CLERKS  
INTERNATIONAL ASSOCIATION, AFL-CIO.

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**Statement of Issues Presented by Local 1325's Petition for  
Review.**

1. Did the Board act properly in not requiring the Company to make the employees whole for any losses they may have suffered as a result of the Company's unlawful refusal to bargain?

2. Whether the Board acted properly in failing to order the Company to reinstate all conditions of employment unilaterally changed in a way detrimental to the employees since the Board's certification of the Union.

### Statement of the Case.

This is a petition to review a decision and order of the National Labor Relations Board issued in a proceeding entitled *Adams Drug Co., Inc., and Local 1325, Retail Clerks International Association, AFL-CIO*, case 1-CA-6084, 171 N.L.R.B. No. 13. The Board proceeding was based on a complaint issued pursuant to a charge filed by Local 1325, Retail Clerks International Association, AFL-CIO (herein called Local 1325). The complaint alleged that Local 1325 had been certified by the Board as the exclusive collective bargaining agent of the employees of Adams Drug Co. (herein called "Adams Drug") in its Rhode Island stores, and that Adams Drug refused to bargain with Local 1325, in violation of section 8(a)(1) and (5) of the Act, 29 U.S.C. § 158(a)(1) and (5).

The Board sustained the allegations of the complaint and ordered that Adams Drug bargain with Local 1325. However, the Board refused Local 1325's requests (1) that Adams Drug be ordered to make the employees whole for losses they may have suffered as a result of Adams Drug's unlawful refusal to bargain and (2) that Adams Drug be ordered to restore all conditions of employment unilaterally changed in any way detrimental to the employees since the Board's certification.

### Argument.

When a labor organization is certified by the Board as the exclusive bargaining agent for a unit of employees, the employer is under a duty to bargain collectively with the labor organization. Section 8(a)(5) of the Act, 29 U.S.C. § 158(a)(5). Section 8(d) of the Act, 29 U.S.C. § 158(d), defines the duty to bargain collectively:

"For the purposes of this section, to bargain collectively is the performance of the mutual obligation of



the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . .”

The Board has held that, when a Union wins an election and the employer knows that the Union represents a majority of the employees, the employer acts unilaterally thereafter at his peril. *Laney & Duke Storage Warehouse Co.*, 151 N.L.R.B. 248, 267 (1965), and cases cited. In this case a majority of employees voted in an election held on June 9-10, 1967, for representation by Local 1325 (A. 5). Certification issued on July 18, 1967 (A. 5), and the Board denied review on September 13, 1967 (A. 5).

The employer has refused to bargain with the Union, ostensibly to test the legality of the certification. But any employer who takes such action necessarily benefits from employee demoralization and lack of enthusiasm for collective bargaining. Ross, *Analysis of Administrative Process under Taft Hartley*, Labor Relations Yearbook, 1966, p. 299. This is so even if the employer's refusal to bargain is solely motivated by a desire to contest the legality of the certification.

We are aware that this Court has rejected arguments by labor organizations which urged the “creation of unprecedented remedies” against employers in cases such as this. *Retail, Wholesale, & Department Store Union v. National Labor Relations Board* (D.C. Cir. 1967), 385 F. 2d 301, 302. The Union in that case urged the Court to order the employer to make “any collective bargaining agreement ultimately negotiated by the parties . . . retroactive to the date when the company first refused to bargain.” That remedy was, as the Court correctly noted, unprecedented.

The remedy requested by Local 1325 in this case is not novel. It is supported by Board precedent in other types of cases. Local 1325 requests only that those conditions of employment unilaterally changed by the employer in a way which *adversely affects* the employees be reinstated, and that employees be made whole for losses occasioned by such adverse changes.

The Supreme Court has made it clear that a finding of subjective bad faith is not necessary to warrant a Board determination that unilateral action by an employer violates the Act. *National Labor Relations Board v. Katz* (1962), 369 U.S. 736. Therefore, the mere fact that this employer may have acted in good faith in refusing to abide by the Board certification is not relevant. The fact that the employer did not appeal to the Courts, but instead awaited action by the Board, is, however, worthy of note.<sup>1</sup>

The Board's only answer to Local 1325's appeal is that "the record does not show that any such changes were pleaded in the complaint or litigated in the proceeding" (Board's Brief, p. 32). This is not an adequate answer, since it fails to recognize that the complaint was issued on October 5, 1967, less than a month after the Board denied review of the certification on September 13, 1967 (A. 1, 5). The majority of unilateral changes would have been made between the time of the complaint and the date of the employer's ultimate compliance with the certification. Litigation of individual changes would therefore not be feasible, since it would delay a speedy determination of the certification issue.

The Board's decision (A. 13-14) indicates that it did not even consider Local 1325's exceptions on this point. See footnote 1, A. 13. It is respectfully submitted that the

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<sup>1</sup> In *Retail, Wholesale & Department Store Union v. National Labor Relations Board*, *supra*, the employer did petition for review.

Board acted improperly in failing to consider Local 1325's request that the employees be protected against unilateral changes adversely affecting them during the period of time when the employer is unlawfully refusing to bargain.

**Conclusion.**

The Board's order should be enforced. The Board should be instructed to further order the employer to restore all conditions of employment unilaterally changed in a way detrimental to the employees since the date of certification.

WARREN H. PYLE,  
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ASSOCIATION, AFL-CIO.

**BRIEF FOR ADAMS DRUG CO., INC.**

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IN THE

**RECEIVED**  
**United States Court of Appeals**

OCT 30 1968  
FEDERAL DISTRICT OF COLUMBIA CIRCUIT

CLERK OF THE UNITED  
STATES COURT OF APPEALS **No. 21,938**

LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*  
ADAMS DRUG CO., INC., *Intervenor.*

**No. 22,009**

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

ADAMS DRUG CO., INC., *Respondent.*

On Petition To Review and on Application for Enforcement  
of an Order of the National Labor Relations Board

United States Court of Appeals  
for the District  
Circuit

WILLIAM J. SHEEHAN  
530 Hospital Trust Building  
Providence, Rhode Island

02903

**FILED** OCT 30 1968

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**BRIEF FOR ADAMS DRUG CO. INC.**

---

**STATEMENT OF ISSUES PRESENTED**

The Company accepts the statement of issues as set forth in the Board's brief.

**STATEMENT OF THE CASE**

Except as set forth hereinbelow, the Company accepts the statement of the case as set forth in the Board's brief.

The Board found that the Company violated Section 8 (a) (1) and (5) of the Act by its refusal to bargain with the Union, which had been certified by the Board as the representative of certain of its employees working in the

drug stores of the Company located in the State of Rhode Island.

The act of refusal to bargain with the Union is not disputed by the Company, which was its only method of securing review of the Board's action in the representation case out of which the certification of the Union arose.

## **I THE REPRESENTATION CASE**

### **(a) Petition and decision of the Board**

On April 25, 1966, the Union, Local 1325, Retail Clerks International Association, AFL-CIO, by a petition to the Board, sought certification as the collective bargaining agent of certain employees of the Company in a unit composed of the Company's Rhode Island stores—twenty-five in number. It was the position of the Company that this unit was not appropriate but that it should consist of the New England States stores; that is, those in Rhode Island, Massachusetts and Connecticut (J.A. 22).

The Board made the following findings of fact based on the record before it, and while the Company contends there may be additional pertinent facts of record, it does not dispute the Board's findings:

"The Employer operates a chain of 83 drug stores in Rhode Island, Massachusetts, Connecticut, New York, Kansas, and Oklahoma. Its central office and warehouse are in Pawtucket, Rhode Island. The stores are operated either directly by the Employer or by wholly owned subsidiaries of the Employer.<sup>1</sup> There are 25 drug stores in Rhode Island,<sup>2</sup> all but one of which operate under the Adams Drug Store trade name,<sup>3</sup> and all are in Providence-Pawtucket-

<sup>1</sup> The Employer directly operates the central office and warehouse and 6 of the Rhode Island stores.

<sup>2</sup> Certain food products are sold in most of the stores. Three operate fountains. Four operate post office substations.

<sup>3</sup> The exception is the Brown-Adams store in Woonsocket. Five Massachusetts stores also operate under the Adams Drug trade name: Attleboro, Cambridge, Somerset, and the 2 in Fall River.

Warwick metropolitan area.<sup>4</sup> The Employer has 12 stores in Massachusetts,<sup>5</sup> 7 in Connecticut,<sup>6</sup> and 24 in New York, at points within and between the Buffalo-Niagara Falls and the Albany-Schenectady areas."

"At its central office the Employer maintains records and prepares the payroll for all 83 stores. The central warehouse provides all stores with much of their merchandise. As to some merchandise such as newspapers, magazines, books, lunch counter items, certain drugs, and other items, the Employer designates the vendors from which the store managers may buy.

"Store operations are under the overall supervision of a general store supervisor who reports to the Employer's treasurer and director of store operations. Under the general store supervisor are 7 'area' supervisors who assist store managers in solving problems arising in the operations of their stores. There is also a cosmetic supervisor who assists managers of stores in the New England States in the operation of their cosmetic departments. Three of the area supervisors service stores in the New England States. However, the stores which each services do not necessarily fall within a distinct geographic area, as stores are assigned to them on the basis of convenience, workload, talent, and experience with the particular problem arising. It is clear, therefore, that the Rhode Island stores do not comprise an administrative subdivision of the Employer's chain.

"The central office exerts control of store operations in other ways. It establishes price list, nego-

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<sup>4</sup> See Standard Metropolitan Statistical Areas, 1964 edition, as amended May 24, 1966, published by Office of Statistical Standards, Bureau of the Budget. The Wakefield store is virtually on the boundary line of the area. Also within the area is the Employer's Attleboro, Massachusetts, store, located 5 miles distant from the nearest Rhode Island store. The Employer's 2 stores in Fall River and 1 in Somerset, Massachusetts, located about 8 miles from the Rhode Island State line, are within a separate Fall River metropolitan area.

<sup>5</sup> These stores are located in the eastern part of Massachusetts. Three of them do not operate a pharmacy.

<sup>6</sup> One does not operate a pharmacy. The nearest Connecticut store is 50 miles from the Rhode Island stores. The average employee complement for Connecticut stores is 25; for Massachusetts and Rhode Island stores, it is 10 to 11.

tiates prices for items to be bought from the outside vendors, and formulates advertising content. Prices are uniform for all stores except as to fair-traded items and local discounts permitted for promotional or competitive purposes. Identical forms are prescribed for all stores. Central office personnel hire the supervisory and professional staff for stores in the 4 eastern states,<sup>7</sup> as well as most stockmen and, on occasions, cosmeticians, and they screen all employment applications. The central office sets store hours.<sup>8</sup> It issues store bulletins setting forth operational guidelines for store managers, including the duties of employees and their starting wages. All store clerks are given the same 'PM's', bonuses for sales of certain items of merchandise. A uniform vacation policy is followed for all Rhode Island stores and the 5 Massachusetts stores which use the Adams Drug Store trade name. The central office arranges for a shopping service to submit factual reports on the competence and honesty of all store personnel. It administers a single non-contributory health and accident plan for all full-time employees at stores in the New England States, as well as group insurance plans for all store employees.

"The store managers direct the day-to-day operations of their stores, within the guidelines set by the central office. Except when problems arise, area supervisors visit the stores infrequently. Store managers determine the size of the store complement, hire their own sales clerks, and recommend promotions. However, as above indicated, cosmeticians are sometimes hired by the cosmetic supervisor, and stockmen, who are assigned one per store, except at a few larger stores, and who have been promoted to store manager positions at a few stores, are generally

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<sup>7</sup> In case No. 1-RC-8507, in which the Petitioner herein sought a unit of all pharmacists employed at the Employer's Rhode Island stores, the Regional Director in a Decision issued October 28, 1965, found that all pharmacists are supervisors as defined in the Act. He indicated that, at all but 5 stores, the store managers were pharmacists and that all other pharmacists were assistant store managers.

<sup>8</sup> Most of the stores, located in or near suburban residential areas, are "long hour" stores; those located in downtown districts are "short hour" stores.

hired by central office personnel. The stockmen and pharmacists, who are generally males, are interchanged and transferred from store to store on occasions: to wit, as part of the training of stockmen, on promotion to store managers, and as substitutes during vacations and emergencies.<sup>9</sup> On the other hand, the store clerks, who are mostly females, are rarely interchanged between stores.

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<sup>9</sup> Once a year an inventory crew, made up of an inventory crew chief, an area supervisor, the cosmetic supervisor, and selected male store personnel, spends a day at each store." (J.A. 154-157)

In its brief, the Board, on page 4, states that the Attleboro, Massachusetts, store of the Company is within eight miles of the Rhode Island stores. This statement is correct as far as it goes. However, this store is within four to seven miles of four other Rhode Island stores of the Company and its Central Warehouse located in Pawtucket, Rhode Island, and is, in fact, closer to the same than it is to any other store of the Company in Massachusetts. (J.A. 133-135).

In its brief, on page 5, the Board states that policy bulletins of the Company sent to various stores vary in accordance with the individual state laws. This is true essentially only as to policy bulletins having to do with sales taxes (J.A. 67).

On page 6 of its brief, the Board states that all full-time employees in Rhode Island stores are covered by a single noncontributory health and accident plan. This also is correct as far as it goes. However, the same plan covers all employees in the Company's Massachusetts and Connecticut stores as well (J.A. 106; 156). In its brief, the Board also refers to Rhode Island laws concerning assignment of future wages, minimum wage requirements, discrimination because of age or sex, employee trusts, a fair employment practices act, first aid, hours of employment, sanitary conditions and garnishment and forfeiture of wages. The Board, of course, in its Decision and Order



reversing the Regional Director's dismissal of the petition (J.A. 154-157), did not rely on and, in fact, made no finding of fact as to the existence of these statutes. Both Connecticut and Massachusetts have statutes concerning all of these provisions and essentially they are similar to the Rhode Island statutes. Obviously, the sales tax statutes in any of the three states has no effect on the wages, hours and working conditions of clerical employees.

	Connecticut	Massachusetts
Sales tax	12-400 et seq.	P.L. 1966, Chap. 14, Sec. 1-3
Minimum wages	31-1 to 31-68	Chap. 151, Sec. 1, et seq.
Assignment of wages	52-361	Chap. 154, Sec. 4
Discrimination based on age or sex and fair employ- ment practices act	31-122 to 125	Chap. 154
First aid	31-45	Chap. 149
Hours of employment	31-13 to 21	Chap. 149
Sanitary conditions	31-35	Chap. 149, Sec. 103, et seq.
Garnishment or forfeiture of wages	52-361	Chap. 246, Sec. 28

#### (b) Decision and order of the Regional Director

The Regional Director, on June 16, 1966, dismissed the petition of the Union since he found nothing which would distinguish the stores in Rhode Island from some or all of the stores in Massachusetts and, therefore, he found the unit to be too narrow (J.A. 220-221). The Union sought review of the Regional Director's Decision, which is provided for in section 102.67(b) of the Board's Rules. However, it failed to comply with the Board's Rules in stating any ground upon which review could be had (J.A. 222-225). The International Union telegraphed the Board that review should be granted because a statewide unit was traditional in the retail field (J.A. 153, 154). The record was barren of any evidence to support this self-serving statement then, and it is just as sterile today. The Board, in fact, cannot cite one case to support this "claim."

On September 13, 1966, the Board granted review, and on May 12, 1967, reversed the Regional Director and found that the unit sought by the Union, upon which unit it relied at the hearing to the exclusion of any alternate unit (J.A. 117), was appropriate.

The Board, on page 7 of its brief, states that the stores in the Providence-Pawtucket-Warwick area, a Standard Metropolitan Area as determined by the Bureau of the Budget (J.A. 217-218), did constitute an appropriate unit and that this required only the addition of one more store to the twenty-five sought by the Union, that is, the Attleboro, Massachusetts, store. That is incorrect, as the Wakefield, Rhode Island, store of the Company did not fall within the defined areas, as the Direction and Order of the Board (J.A. 154) sets forth, and, of course, at the time of the election, the Company's stores in Portsmouth (Middletown) and Westerly, Rhode Island, were not within that area, and the last-named was fifteen miles from the closest store of the Company, that is, the one located in Wakefield, Rhode Island, which itself was outside of the statistical area (J.A. 130-132; 217-219). The Portsmouth, Rhode Island, store was also about fifteen miles from the nearest store in the State of Rhode Island of the Company, that is, the one located in the Town of Warren (J.A. 141; 219).

**(c) The election and objections**

The election was held on June 9 and 10, 1967, and 137 votes were cast for the Union, 105 against it and there were 26 challenges, all by the Union (J.A. 160). As a result, the Union was thereafter certified when the Company's objections were overruled on the basis of a majority of 6 votes.

The Company filed the following timely objections to the preelection conduct of the Union (J.A. 161-162).

"1. The Union represented to the employees of the employer falsely that all its members were covered by the health and welfare plan set out in Exhibit 1

attached hereto and made a part hereof by mailing a copy of the same to substantially all such employees at a time when the Employer could not make an effective reply thereto.

"2. The Union represented to the employees of the Employer as set out in Exhibit 1 that they could enjoy membership in the Union, which would include, the health and welfare plan to which reference is made in Objection #1 without any cost to them until or unless the Union obtained a wage increase greater than the amount of dues it charges.

"3. The Union represented to the employees of the Employer that they could have all of the advantages of membership in the Union without charge to the employees of the Employer until and unless the Union secured a wage increase for the employees which was greater than the dues it charged as set out in Exhibit 1.

"4. The Union represented falsely that all employees represented by it get paid for ten (10) holidays each year, that all employees get six (6) weeks full pay for sick leave as set out in Exhibit 2 attached hereto and made a part hereof which was mailed to substantially all employees of the Employer."

The Company based its objections 1, 2 and 3 upon the Union flyer (J.A. 165), which was mailed by the Union to the employees on June 5, 1967, and objection #4 on a leaflet mailed to the employees on June 2, 1967, J.A. 166, which were four and seven days, respectively, preceding the election.

The Company's position concerning the objections were that as to the flyer mailed on June 5, 1967, the Union represented to the Company employees that *membership* in the Union was the only criterion for securing a union plan of health and welfare benefits consisting of up to \$7,500 of life insurance, \$70 per week payment while out sick, hospital rate of \$27 per day, \$300 surgical fee, \$5 per day for doctor's call, and \$10,000 for major medical coverage (J.A. 165).

The Union also represented in the same flyer that the employees of the Company could have all the advantages of Union membership, including coverage by the foregoing health and welfare plan, without payment of dues until such time as the Union secured from the Company a wage increase for the employees, which was greater than the dues it charged.

Objection #4 was based upon the Union flyer mailed on June 2, 1967, in which the Union stated that all employees represented by it get paid for ten holidays each year and get six weeks' full pay for sick leave.

The Regional Director and the Board concluded that the first flyer did not represent to the Company's employees that all the members were covered by the foregoing health and welfare plan (J.A. 163). However, the flyer does state, "We have just recently completed a health and welfare plan which gives our members, (full & part time), up to \$7500.00 life insurance . . ." Perhaps the Board and other sophisticates can interpret this sentence to mean that the Union is talking about the employees of some particular employer or group of employers. However, literally read, as the employees of the Company must read it if no other information were given to them—and there is nothing in the record as to this—to mean that it is a welfare plan of the Union itself and that it can determine unilaterally to whom the benefits will go and that there is no qualification concerning that "members" are covered.

As to objection #4, the Board concedes, on page 10 of its brief, as did the Regional Director in his Decision and Order (J.A. 164) dismissing the objections to the election and certifying the Union, that this was an "exaggerated" statement but that it was not a substantial departure from the truth. The Board, in its brief, page 10, claims the Company had ample time prior to the election to respond to the claim if it wished to do so and that the Regional Di-

director so found. It does not appear that the Regional Director made such a finding (J.A. 161-164).

The Company furnished to the Regional Director copies of two agreements the Union had with certain employers in the Commonwealth of Massachusetts, together with a copy of one health and welfare plan, all of which it had obtained after the election and which were not available to it prior to the election, which substantiated its position, particularly to the nonapplication of any of the Union's claims in both flyers to part-time employees. However, the Regional Director, without reference to the provisions in the two contracts or the health and welfare plan of the Union furnished to him, and without reference to any other specific agreement or health and welfare plan the Union had with employers, without conducting any hearing, dismissed the Company's objections and certified the Union as the collective bargaining agent of the Company's employees (J.A. 164). Thereafter, the Company filed a timely request for review of the Regional Director's Decision with the Board, setting forth in the Request for Review that no hearing had been afforded to it, though obvious material and substantial issues were raised and were posed on the face of the Regional Director's Decision. The Board denied the Company's Request for Review, also without affording any hearing (J.A. 180).

## **II. THE UNFAIR LABOR PRACTICE CASE**

The Company immediately refused to bargain on request with the Union and from that time forward cooperated with the General Counsel, the Board, and the Union to bring the issues involved in that case before this Court.

### **(a) The motion for summary judgment**

The General Counsel of the Board moved for summary judgment after the filing of the Company's answer in the unfair labor practice case on the ground that the answer sought merely to relitigate issues already considered and

overruled in the representation case. The Company opposed the motion for summary judgment on the basis that there was newly discovered evidence previously unavailable to it (J.A. 2).

In its answer (J.A. 187), the Company stated that the Board, in its Decision and Direction of Election, incorrectly relied upon the fact that only one store in Rhode Island was outside of the Providence-Pawtucket-Warwick Metropolitan Area, as defined in Standard Metropolitan Statistical Areas, 1946 edition, as amended May 24, 1966, Bureau of the Budget (J.A. 217-218), as there were two additional stores of the Company in the State of Rhode Island at the time of the election which did not fall within said area. In its reply to the motion for summary judgment, the Company stated that the foregoing document of the Bureau of the Budget relied upon by the Board in its Decision was, in fact, out of print and unobtainable. (J.A. 2). The record is silent concerning regulation of drug stores within the State of Rhode Island by the State Government except the bare statement of the Union and the Board, that they are "regulated" (J.A. 154). Therefore, the Company stated in its reply that a search of the statutory law of Rhode Island revealed no control of the hours, wages and working conditions of clerical employees in drug stores and, in fact, revealed no control of hours, wages, and working conditions of any employee, including professional pharmacists. The Company also stated in its reply that prior to the election, it was unable to reply to the two flyers concerning fringe benefits of Union members or employees represented by it because the alleged agreements and benefit plans of the Union were unknown to it. It stated that subsequent to the election, it had obtained copies of agreements and benefit plans, which, on information and belief, represented all of such agreements and plans to which the Union was a party.

It also stated that no hearing had been afforded to it concerning its objections to the election and that in the

event the motion for summary judgment were granted, it would be foreclosed from obtaining a hearing in any proceeding on said objections (J.A. 2). The motion of the General Counsel for summary judgment was denied by the Trial Examiner.

**(b) The unfair labor practice hearing**

Thereafter, hearing was held before the Trial Examiner on the complaint of violation of Section 8(a)(1) and (5) of the Act by the Company. The Trial Examiner found a violation of Section 8(a)(1) and (5) by the Company, concluding that even if there were newly discovered evidence, that is, the Standard Metropolitan Statistical Area publication, which he refused to find was or was not newly discovered evidence, and this revealed three stores were outside of the Providence-Pawtucket-Warwick metropolitan area, it did not mean that the unit, as determined by the Board, was in error (J.A. 7).

**b(1) The burden of determining the physical extent of the unit**

The Trial Examiner apparently considered that since two new stores were opened by the Company in the State of Rhode Island in the approximate one-year period that elapsed from the hearing in the representation case to the issuance of the Board's Direction of Election, that there was fault on the part of the Company in not advising the Board of the opening of the two new stores (J.A. 7). (This is a remarkable piece of reasoning, since the definition of the Providence-Pawtucket-Warwick metropolitan area, cited by the Board in the Direction of Election (J.A. 154) was not available to the Company until many months after the election. In fact, the General Counsel was unable to obtain a copy until approximately the same time) (J.A. 129). This burden the Board, not the Company, must have assumed since it determined that a statewide



unit was an appropriate one, at least in part based upon the fact that all but one store in Rhode Island lay within a metropolitan area which it determined from an out-of-print publication not available to the Company. It would appear that on these facts, the burden was on the Board to make inquiry, not the Company to advise of something it could not possibly be aware, particularly where the Board held the case for almost a year.

#### **b (2) State-regulated drug stores**

The Trial Examiner also found that issue was joined in the representation case on the matter of control by state regulation of retail drug stores, because in its Request for Review in the representation case the Union had set forth a contention that such state regulation did, in fact, exist and supported a state-wide unit, and that the Company, in its statement of opposition to such review, had attacked the Union's citation as meaningless and took issue with the contention (J.A. 8). It is somewhat amazing to the Company to find that issue can be joined after the hearing is closed and without one shred of evidence in the record concerning such state regulation and without a remand by the Board to take evidence concerning such regulation if it considered, as the Trial Examiner did, that the distinguishing feature segregating Rhode Island employees from the Company's other employees and giving them a special community of interest was "the State's regulation of the retail industry" (J.A. 8). The record of the representation case, as well as the unfair labor practice case, remains totally silent on any State regulation of retail drug stores which would have the slightest effect on the wages, hours, and working conditions of any employee in the unit determined as appropriate by the Board, one of the principal factors—if not the principal factor—that the Board, as the Trial Examiner conceded (J.A. 8), used for finding such unit appropriate.

**b (3) The objections to election**

The Trial Examiner summarily disposed of the Company's position (a) as to a hearing on its objections to the election, (b) that the request for review of the Union of the dismissal of its petition by the Regional Director was not based on any of the grounds set forth in Section 102.-67(c) of the Board's Rules and (c) that the Board's decision on review was otherwise defective on its face, on the ground that there was no newly discovered or previously unavailable evidence concerning the appropriateness of the bargaining unit or of the Board's certification and, therefore, none of them could be litigated in the unfair labor practice case (J.A. 5, 6).

The Trial Examiner refused to receive any evidence concerning the same, and the Company still has not obtained any hearing concerning its objections to the election.

**b (4) The Trial Examiner's decision**

Both the Company and the Union excepted to the Trial Examiner's Decision. The Board sustained the Trial Examiner, finding that he had committed no prejudicial error in his findings of fact or conclusions of law. The Board rejected the Union's request that as a part of the remedy ordered by the Board, the Company be directed to compensate its employees for any monetary losses they suffered by virtue of refusal to bargain or that the Company be directed to restore working conditions unilaterally changed since the date of certification of the Union (J.A. 13). The order of the Board, therefore, requires the customary posting of notices and directs the Company to cease and desist from refusing to bargain with the Union.

## **ARGUMENT**

### **1. THE UNIT**

The Board, in its brief, lays great stress upon its discretion under the Act to determine an appropriate unit. The Company does not quarrel with this interpretation of Section 9 of the Act. However, the discretion, as exercised, must be reasonable, consistent, and nonarbitrary. It is the Company's position that the Board's unit determination did not fit those criteria.

#### **(a) Statewide unit**

The Board, in its brief, also goes to great lengths to set forth that the Board has determined in the insurance industry that statewide units in field claim and debit offices are appropriate. Again, the Company does not quarrel that the Board has made such findings and has determined such a unit to be appropriate in those particular types of offices in the insurance industry, that is, where employees work outside their offices, throughout a particular territory of an office. But to compare such employees with retail store clerical employees who essentially work for and within only one store, with little or no judgment to be exercised in the course of the employment, is to compare apples to oranges. Certainly, a determination of a statewide unit in these offices of the insurance industry would be absolutely no criterion for a statewide unit in the retail drug store industry.

It is obvious that the Board is attempting to break new ground, since it itself can point to no decision in which such a unit has been determined to be appropriate in the retail field, not even one limited to drug stores. Thus, the Board's finding (JA. 153) that the Union's request for review was granted because the request was based on the fact that the Regional Director departed from Board policy in finding the requested unit inappropriate does not fit the facts as the Board now concedes in its brief on page 21.

**(b) State regulation of drug stores**

The Board, in its Decision and in its brief on page 17, laid great stress for the determination of a statewide unit on the substantial regulation by the State of Rhode Island of the retail drug businesses within its borders and that this element of state regulation warranted a finding of appropriateness of the requested statewide unit. The record is virtually silent on control or lack of control by the State of Rhode Island of the retail drug business except for the citation, rather ambiguously made but now pinned down, to Rhode Island General Laws, 1956, Title 5, Chapter 19, Section 1 through 37. This chapter, through the first eighteen sections, is concerned with the examination, registration, expiration, renewal and discrimination or refusal to renew of registrations of pharmacists.

**(c) The regulation of the State does not apply to employees of the Company**

In representation case 1-RC-8507, on the petition of the same union, the Board determined that the pharmacists employed by the Company in the State of Rhode Island were supervisors and therefore do not even fall within the definition of employees in the Act. Thus, whatever is required of them by the Company are not actions performed by "employees." Notwithstanding, Sections 20 through 30 of the aforementioned chapter are concerned with the stocking, dispensing and recordkeeping of drugs, licenses for resale, licenses for dispensing within medical institutions, licenses for auction sales of drugs, the punishment of unauthorized persons engaged in the profession of pharmacy, investigation and prosecution of violations of the Act and responsibilities of the Board of Pharmacy, whose main function is the examination and licensing of pharmacists. There is absolutely nothing in this Act which refers to clerical employees working in retail drug stores or their hours, wages, or working conditions.

The Board, in its brief, also refers to food, drugs and cosmetic laws of the State of Rhode Island, which is contained in General Laws of Rhode Island, 1956, Title 21, Chapter 31, Sections 1 through 23 (J.A. 192-213). This chapter deals primarily with the manufacture, packaging and labeling for sale of drugs and cosmetics and the sale of adulterated or misbranded food. In other words, this statute applies, if at all to the Company, to management personnel and not to a clerical employee, and even if it were construed to apply to a clerical employee, it has no effect on hours, wages and conditions of employment which are the criteria upon which community of interest is founded in the determination of an appropriate unit. Obviously, the mere citing of a statute, without any determination in its Decision as to how this statutory law affects the wages, hours and working conditions of the clerical employees in the Company's stores in the State of Rhode Island, does not create a basis for the determination that the existence of the statutes creates a community of interest for such employees apart from all other employees of the Company.

**(d) Massachusetts, Connecticut and Rhode Island regulate the dispensing and packaging of drugs**

The Board, in its brief on page 19, apparently believes the negative of something, that is, that the dispensing, preparation and packaging of drugs being forbidden to employees other than pharmacists, creates a limitation upon the work retail clerks can do and therefore creates some community of interest among them. Ingenious, but not effective. The Board must know that substantially the same restrictions concerning dispensing and handling of drugs exist in Massachusetts, General Laws, Ter. Cent. Ed., Chap. 112, Sec. 25, et seq., and Connecticut, General Statutes 1958, 20-166. The Board might as well argue that since licenses are required to do electrical and plumbing work in the stores, their inability by law to perform

this work without a license also created some community of interest among the retail clerks. Perhaps community of interest based on hours, wages, working conditions and other standards of employment should be based on what employees do not do or do not receive. Up to now, however, it has been based primarily upon what they do and what they receive.

**(e) Such regulation as exists is regulation of a profession**

In 1-RC-8507, the parties conceded that pharmacists, even if not supervisors, were professional employees, as the Board has often found. In any event, the Board cannot lift itself by its own bootstrap by taking the position that clerical employees have a community of interest apart from other clerical employees in other stores, based solely on the criterion that the clerks in question cannot perform certain work which is the duty of a professional employee as a matter of law and which *no* clerk anywhere in the Company's employ can perform.

In its brief, on pages 6 and 19, the Board refers to the substance of the laws regulating drug stores being developed in the course of testimony by the Company's own official at SA 33-36. Those pages show only that the witness was aware laws existed, not the content of them or what they purported to regulate or what, as a matter of practice, was the effect of them on the conditions of employment of retail clerks. There is nothing in the record which shows that the clerks are affected by any law applying to drug stores.

It is submitted on the state of the record concerning this heavily relied on aspect of the Board's Decision, if the Board were concerned with the possibility of state regulation running to clerical employees which might create a community of interest in them significant enough to set them apart from other clerical employees of the Company

in other states, the case should have been remanded by the Board to take evidence thereof.

In the state of the record as it exists, the Board's determination was the exercise of an absolute discretion, i.e. dictation, not one of reason, consistency and freedom from arbitrariness. *Rayonier Incorporated v. NLRB*, (CA 5) 380 F. 2d 187 (1967); *Metropolitan Life Insurance Co. v. NLRB*, (CA 1) 327 F. 2d 906, vacated and remanded 380 U.S. 438 (1965).

**(f) The metropolitan district**

At the time of the Decision on Review and Direction of Election, the Company's stores in the State of Rhode Island did not, with but one exception, fall within the Providence-Pawtucket-Warwick metropolitan area as defined in Standard Metropolitan Statistical Areas, 1964 edition, as amended May 24, 1966 (J.A. 217, 218). In fact, the Westerly, Rhode Island, and the Middletown, Rhode Island, stores were many miles outside of this statistical area. The Westerly store was, in fact, approximately 15 miles from the nearest store of the Company in the State of Rhode Island, that is, the store in Wakefield, Rhode Island, which is itself outside of the statistical area (T. 25; J.A. 219).

The store in Middletown, Rhode Island, sometimes referred to in the record as Portsmouth, was approximately 15 miles from the nearest store in the State of Rhode Island of the Company, at that time located in the Town of Warren (J.A. 141, 219). In fact, the store in Middletown, Rhode Island, is at least as close to the stores of the Company in Fall River, Massachusetts, as it was to the closest store in the State of Rhode Island, at Warren, at that time (J.A. 219).

The store of the Company in Attleboro, Massachusetts, was closer to at least four stores of the Company located in Rhode Island than either the Middletown or Westerly



stores were to other Rhode Island stores and, in fact, the Attleboro store is within the so-called statistical area upon which the Board relied. Stores of the Company located in Somerset, Massachusetts, and Fall River, Massachusetts, are located within 16 miles or less of one or more of the Company's stores located in the State of Rhode Island. The Attleboro, Massachusetts, store is, in fact, closer to at least four other stores of the Company located in Rhode Island and its Central Office located in that state than it is to any store of the Company located in Massachusetts (J.A. 219; 133-135). It is amusing that the Union has its office in Fall River, Massachusetts, that its only contracts of record are with Massachusetts employers covering Massachusetts locations and nevertheless the Massachusetts store of the Company, which is closer to the Central Office of the Company than at least 20 stores in the State of Rhode Island, is not in the unit because the Union does not want it.

**(g) Extent of organization**

Obviously, the Petitioner is seeking a unit which is based solely on its extent of organization. It is equally obvious that the Board, with several makeweights, which cannot withstand scrutiny, has bought this argument despite the statutory prohibition. In fact, in view of the Board's findings, all of which are contained in the hearing record, of the organization of the Company's stores, including control of the Central Office as to prices, advertising, forms for operation of its business, including those having to do with employee relations in use throughout the system, the Central Office hiring of many of the employees of all stores, the Central Office determination of personnel policies for all stores, the amount of commission payments to clerks in all stores, the uniform vacation policies for almost the entire chain, including Rhode Island, the reporting to the Central Office by a shopping agency of the conduct of employees in all stores and their operation, of a group insurance plan for all employees in the New England stores,

of the control of stores in groups by area supervisors as front-line management, all are indicative of and have been used in prior cases by the Board as criteria for determining a unit which is certainly wider in scope than the one determined here to be appropriate.

Other criteria, such as control by a store manager of the day-to-day operations of his particular store, the determination by him, within limits, of the size of the store complement and the hiring and firing by him of clerical employees, the recommendation by him as to promotions of clerical employees, all warranted the determination that a single store may be an appropriate unit. These facts are all drawn from the record and, in fact, the Board notes them in its Decision and Order (J.A. 154).

Thus, the record would indicate at least that the Rhode Island stores are not in themselves an appropriate unit and that some larger grouping of stores than the Rhode Island stores may be an appropriate unit. The Board must set forth its findings and standards applied in its unit determinations. *NLRB v. Metropolitan Life Insurance Company*, 380 U.S. 438 (1965). To announce certain standards which are set forth in the record which would require it to dismiss the petition because the unit sought was inappropriate but to attempt to overcome this with erroneous conclusions drawn not from the record but from sources it developed, does not meet this obligation.

The Board has been admonished that it does not have absolute discretion to determine an appropriate unit but that it must adhere to its own announced criteria, observe its own standards and draw its conclusions based upon the facts set forth in the record or of which it can and has taken appropriate judicial notice. *Rayonier Incorporated v. NLRB*, 380 F. 2d 187 (CA 5), 56 LC 12064 (1967); *Metropolitan Life Insurance Co. v. NLRB*, 327 F. 2d 906 (CA 1), 49 LC 18760, vacated and remanded to the Board, 380 U.S. 438 (1965), enforcement denied.

**(h) State labor laws are not the basis for determining a unit**

The Board has adopted as a standard that state laws affecting labor are not a sufficient basis to justify a unit limited to one state. *Broomall Construction Company*, 137 NLRB 344; *Queen City Railroad Construction, Inc.*, 150 NLRB 1679. The Board must include in its decisions findings as to the criteria used by it in exercising its discretion to determine an appropriate unit. *NLRB v. Tallahassee Coca-Cola Bottling Company*, 381 F. 2d 863 (CA 5), 56 LC 12115 (1967). Obviously, the Board does not fulfill this duty when its findings as to the criteria used are either not contained in the record or the Board attempts to use as a criterion a general statement of a state's regulation of certain types of enterprises without indicating the authority for that bald assertion where, in fact, the record is silent except for an ambiguous reference on the point.

In addition, the Board's use of a metropolitan statistical area determination by another agency, incorrectly and without ascertaining its application at the moment of its decision, constituted clear error in its determination of an appropriate unit. This reference (J.A. 217, 218) was made on the Board's own initiative and, in fact, was made from a reference work which was out of print at the date of the decision and not available to the Company. By its use and its conclusions drawn therefrom, without ascertaining its effect on a record then almost one-year old, the Board assumed a heavy burden which it has not successfully discharged.

**(i) Newly discovered evidence requires the Trial Examiner to take evidence of the unit determination**

The Trial Examiner and the Board attempted to shift the burden to the Company when he stated that the Company could have brought to the attention of the Board that the two new stores were open. However, the Union was seeking a statewide unit as the only acceptable unit.

In that context, the conclusion of the Trial Examiner and the Board is clearly erroneous.

It was not until the Board based its decision at least in part on a particular metropolitan statistical area which was not part of the record before it, that this became important. Since the publication that this was taken from was out of print and the Company was unable to learn what the cited statistical area covered until many months after the election, in fact, until after the Complaint had issued (J.A. 129), this burden could not be imposed upon the Company.

The Trial Examiner refused to decide the question forthrightly of whether there was newly discovered or unavailable evidence in the representation proceedings. However, it is clear that there is, that it affects the ground upon which the Board based its decision in part and that the Company was entitled to have the question of the appropriate unit fully litigated before the Trial Examiner. *American Steel Buck Corp.*, 110 NLRB 2156; *Seine and Line Fishermen's Union of San Pedro*, 136 NLRB #2.

## II. THE OBJECTIONS TO THE ELECTION

In its objections the Company alleged that, through one flyer, the Union stated substantially that all its members were covered by the health and welfare plan set out in the flyer and that the employees of the Company could become members of the Union, which would include all the advantages of Union membership, including participation in the health and welfare plan, without cost to them until the Union obtained a wage increase greater than the amount of dues it charged. The Union, according to the Company, also stated, in the other flyer, that all employees represented by it have ten paid holidays each year and that all get six weeks' full pay for sick leave. The Company, though it sought a hearing on the basis of information furnished to the Regional Director concern-

ing two contracts of the Union with employers which did not contain the foregoing benefits, so as to prove its allegations, was never accorded such hearing by either the Regional Director or the Board on the basis of its Request for Review of the Regional Director's Decision Dismissing the Objections.

**(a) Financial charges**

In substance, the Regional Director found that a pledge of reduced or no financial charges is legitimate if it does not suggest a disparity of treatment based upon the manner in which an employee votes. However, this is not the type of reduced financial charges, i.e. either reduced or eliminated initiation fees, which the Board has found warranted in an organization campaign. The financial charge eliminated here could amount to the benefits of membership in the Union and the advantages that go with it as alleged by the Union, including participation in its health and welfare plan, for a time which no one could determine, perhaps for years, since it was conditioned upon the ability of the Union to negotiate a wage increase with the Company which is greater than the amount of dues it charged for membership.

This is the type of benefit which the Board has determined is not proper in an organizing campaign. *Wagner Electric Corp.*, 66 LRRM 1072.

**(b) Exaggerations and ambiguities are misrepresentations**

The Regional Director did find that there were exaggerations and ambiguities in the flyers, yet concluded on the basis of *Hollywood Ceramics*, 140 NLRB 221, that the election should not be set aside. This was of little satisfaction to the Company since the contracts it forwarded to the Regional Director obviously showed more than mere exaggerations. It showed outright misrepresentations by the Union, since part-time employees did not receive many

of the benefits described in the flyers and others were received on a much lower basis.

The Regional Director makes no reference to any other contract of the Union by name from which his conclusions may be drawn, and the Company must accept the general statements of the Regional Director as true. On the basis of the actual contracts submitted to the Regional Director by the Company, however, his statements are incorrect. Thus, the Company is left with a situation where hearing is denied, the Regional Director finds that contracts containing the material alleged by the Union exist without naming them, and the contracts, copies of which were submitted by the Company to the Regional Director, do not contain these benefits in the amounts set forth in some instances or at all in other instances.

The Company has raised many actual issues and furnished evidentiary support of those issues to the Regional Director, who, without even a finding that the evidentiary matter submitted by the Company is not correct or without finding, so that it may be identified, that he has even discovered other evidence which would indicate to the contrary, denies a hearing to the Employer.

This would appear to be the one case in which an employer was entitled to a hearing on the issues presented. The error is compounded by the refusal of the Trial Examiner to accord a hearing to the Company on the objections even at the complaint stage. *NLRB v. Bata Shoe Company, Inc.*, (CA 4) 377 F. 2d 821 (1966), cert. denied 389 U.S. 917 (1966); *Plaskolite, Inc.*, 134 NLRB 175.

**(c) The burden of reply to misrepresentations before the election was not on the Company**

Clearly, under the facts before the Regional Director and the Board, the Company did not have the opportunity to reply to the misrepresentations which the Regional Director classified as "ambiguous statements" or "exaggera-

tions" prior to the election since it did not have any of the contracts of the Petitioner with other employers, to which the Regional Director casually referred, available to it until the election. The statements of the Union in the flyers are peculiarly and authoritatively known to the Union, which did not name the employers, if any, with whom it had agreements on these points. Thus, the misrepresentations were calculated to deceive the employees in the exercise of their free will, and they had no means of evaluating them. This is sufficient ground to set aside the election. *Gummed Products Company*, 112 NLRB 1059; *Cleveland Trencher Co.*, 130 NLRB 600. The Company discharged its burden of supporting the allegations made in its objections and was at least warranted in receiving a hearing under due process standards on its allegations. *NLRB v. Houston Chronicle and Publishing Co.*, (CA 5) 300 F. 2d 272 (1962); *Sunoco Products Company v. NLRB*, (CA 9) — F. 2d — (1968), 58 LC 12888; *NLRB v. Capital Bakers, Inc.*, (CA 3) 351 F. 2d 45 (1965).

The misrepresentations in this instance are particularly cogent since about 75 percent of the employees were working part time and many worked less than twenty hours a week (J.A. 172). This was the line of demarcation as to many of the benefits in one of the contracts forwarded to the Regional Director.

The Company need show only that it is likely that the employees were misled, since the Company was in no position to rebut Union statements of facts peculiarly within its knowledge and a mere denial of them by the Company would achieve no purpose in clarifying the atmosphere in which the employees were to vote. *NLRB v. Trancoa Corp.*, (CA 1) 303 F. 2d 456 (1962); *Celanese Corp. v. NLRB*, (CA 7) 291 F. 2d 224 (1961), cert. denied 368 U.S. 925 (1961).

Where the Union stated that it procured certain benefits for all employees but, in fact, the evidence shows that



the same were available, if at all, in the amounts stated by the Union only to some but less than all employees, then this is sufficient misrepresentation to set aside the election. *Walgreen Co.*, 140 NLRB 1141; *Grede Foundries, Inc.*, 153 NLRB #92; *Collins & Aikman Corporation v. NLRB*, 383 F. 2d 722 (CA 4), 56 LC 12205 (1967). Thus, on this issue alone, the Company did not violate Section 8 (a) (5) when it refused to bargain with the Union. *NLRB v. Ortronix, Inc.*, (CA 5) 380 F. 2d 737 (1967).

In its brief, at page 27, the Board states that the specific items set out in the request for review of the Company concerning part-time employees not receiving benefits listed in the Union flyers and limitation on vacations were not before the Board because they were not contained in the objections filed with the Regional Director. Obviously, since the Company did not secure copies of the contracts and welfare plan of the Union until after the objections were filed, it could not point out each item of difference.

In *Hobart Manufacturing Co.*, 92 NLRB 203, the Board stated that a Regional Director making a post-election investigation is not limited to the issues raised by objections filed by a union. Is there a different doctrine for employer objections? There should not be.

### III. COMPLIANCE BY THE BOARD WITH ITS RULES AND REGULATIONS

In its brief, on page 21, the Board relies on its Rule Section 102.67 (c), subparagraph 1, "that a substantial question of law or policy is raised because of (a) the absence of, or (b) a departure from officially reported Board precedent." The Board concedes that the Union, in making its request for review of the Regional Director's dismissal of its petition, did not assert that it was seeking review on this ground. The Board then argues that from a reading of the request for review as a whole, it, the Union, believed review was warranted on this basis, and

the request was treated on this basis. Hence, says the Board, there was compliance with the Rules and no error in granting the request for review.

The Board argues that there is no sound reason why it should be bound by the terminology of its own Rules or why a party seeking relief from the Board should be bound by these Rules. The purport of the argument is that if the Board, in its judgment, believes review is required, the exercise of its power in discharge of its function cannot be dependent upon a failure to note in the request for review the particular ground on which it is sought or may be appropriate. The clear answer to this argument is, of course, that the Board should abolish its Rules or, to be perfectly consistent with that type of reasoning, change the Rules to provide that review may be had on request when the Board decides it would like to grant it.

Here the request for review was not couched, as the Board now argues, in any context that a substantial question of law or policy is raised because of the absence of or departure from officially reported Board precedent. The request for review and, in fact, the Board's brief does not point out in any instance where the Regional Director departed from Board precedent in dismissing the petition, nor does it point out any absence of reported Board precedent as the ground for review. In fact, the request for review, read in context, simply states that the Union did not like the Regional Director's Decision and requested the granting of the review, and the subsequent decision says nothing more than that the Board did not like the Regional Director's decision either.

The Board erred when it granted the request for review of the Union, and such error was clearly prejudicial to the Company. The Board must observe its own rules scrupulously, and any action taken in contravention thereof is invalid. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260; *Service v. Dulles*, 354 U.S. 363; *Pacific Mo-*

*lasses Co. v. FTC*, (CA 5) 356 F. 2d 386; *U. S. v. Associated Merchandising Corp.*, (DCNY) 261 F. Supp. 533; *Mississippi Valley Barge Line Co. v. U. S.*, (DC Mo.) 252 F. Supp. 162.

#### IV. THE UNION'S REQUEST FOR REVIEW

The Union concedes in its brief that its exceptions to the Trial Examiner's Decision and now its grounds for review of the Board Order refer to nothing of record and not even an allegation in the complaint. Notwithstanding, the Union says the Board is in error because it did not order the Company to make employees whole for losses suffered as a result of a refusal to bargain and the failure to order reinstatement of conditions of employment unilaterally changed in a way detrimental to employees by the Company. Apparently, due process has taken a holiday.

The Union also concedes in its brief that it is not seeking to establish, as its first issue read literally would imply, its proposition that any collective bargaining agreement which may be ultimately entered into as a result of this proceeding shall be made retroactive to the date of the alleged refusal to bargain. The Union now states that it is only seeking reinstatement of conditions of employment which have been changed by the Company and which adversely affect the employees. This, of course, would first pose questions of fact. The first question that would have to be determined is whether there have been any changes in employment conditions, and the next question that would have to be answered is whether some or all of such changes found to be made are adverse to employees. This latter question alone would open up Pandora's box since what might be adverse to some employees might be of benefit to other employees.

In this case, as the Union concedes, the Company was motivated by a desire to have the Board's Order reviewed

and not with the intention of frustrating the Act. It would be a novel concept in this state of the record that the Company would be penalized in the event it elected to have the Order reviewed rather than comply with it. This case is not one permitting or requiring an extraordinary remedy in any event. *Burlington Industries, Inc.*, 144 NLRB #37.

### CONCLUSION

For the foregoing reasons, the petition to review the Board's order and the Board's application for enforcement of its order should be denied.

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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 21,938**

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**LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO,**

*Petitioner,*

v.

**NATIONAL LABOR RELATIONS BOARD,**

*Respondent,*

**ADAMS DRUG CO., INC.,**

*Intervenor.*

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**No. 22,009**

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**NATIONAL LABOR RELATIONS BOARD,**

*Petitioner,*

v.

**ADAMS DRUG CO., INC.,**

*Respondent.*

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On Petition To Review and on Application  
for Enforcement of an Order of The  
National Labor Relations Board

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United States Court of Appeals  
for the District of Columbia Circuit

**FILED OCT 4 1968**

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 21,938

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LOCAL 1325, RETAIL CLERKS INTERNATIONAL  
ASSOCIATION, AFL-CIO,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent,*  
ADAMS DRUG CO., INC.,  
*Intervenor.*

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No. 22,009

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NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

v.

ADAMS DRUG CO., INC.,  
*Respondent.*

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On Petition To Review and on Application  
for Enforcement of an Order of The  
National Labor Relations Board

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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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**STATEMENT OF ISSUES PRESENTED**

The issues presented as set forth in the prehearing conference stipulation are as follows:

A. In Case No. 22,009

1. Whether the Board properly found that a bargaining unit comprising the employees in all retail drug stores owned by Adams Drug Co., Inc., in the State of Rhode Island was appropriate.

2. Whether the Board properly found that statements contained in Union preelection leaflets distributed to Company employees did not warrant setting aside the election.

3. Whether the Company was entitled to a formal hearing on its objections to the election.

4. Whether the Board complied with its Rules and Regulations in granting, in Board Case No. 1-RC-8919, the representation proceeding, the Union's request for review of the Regional Director's dismissal of its petition.

B. In Case No. 21,938

1. Whether the Board acted properly in not requiring the Company to make the employees whole for any losses they may have suffered as a result of the Company's unlawful refusal to bargain.

2. Whether the Board acted properly in omitting to order the Company to reinstate all conditions of employment unilaterally changed in a way detrimental to the employees since the Board's certification of the Union.

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In accordance with Rule 8(d) of the General Rules of this Court, the Board states that this case is before the Court for the first time on the merits.

### STATEMENT OF THE CASE

This case is before the Court upon the petition in Case No. 21,938 of Local 1325, Retail Clerks International Association, AFL-CIO, the

charging party in the case before the Board, to review and modify an order (J.A. 10-12, 14)<sup>1</sup> issued against Adams Drug Co., Inc., pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*), on April 26, 1968. The Board has petitioned this Court in Case No. 22,009 for enforcement of its order. That case has been consolidated for all purposes with Case No. 21,938 by order of the Court dated June 14, 1968. The Board's Decision and Order are reported at 171 NLRB No. 13. This Court has jurisdiction under Section 10(e) and (f) of the Act. There is no question of the Board's jurisdiction, the Company, which operates a chain of retail drug stores in a number of states, being admittedly in commerce within the meaning of the Act.

#### I. THE BOARD'S FINDINGS OF FACT

Briefly, the Board found that the Company violated Section 8(a)(5) and (1) of the Act by its admitted refusal to bargain with the Union which had been certified by the Board as the representative of its employees working in all of its drug stores located in the State of Rhode Island. The Board's finding of statutory violation is based on the following facts:

##### A. The representation proceeding

##### 1. The Union's petition; the nature of the Company's operations

On April 25, 1966, the Union<sup>2</sup> petitioned the Board for an election in a unit composed of "all employees working in the Employer's Rhode

<sup>1</sup> "J.A." refers to the Joint Appendix; "Tr." refers to the stenographic transcript of the testimony. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence. The pagination used is that appearing at the bottom of the appendix pages. "S.A." references are to the supplemental appendix, *infra* at pp. 33-36, which reproduces certain portions of the testimony inadvertently omitted from the Joint Appendix.

<sup>2</sup> Local 1325, Retail Clerks International Association, AFL-CIO.

Island Stores (25)" (J.A. 154; 20, 22). The Company took the position that the requested unit was inappropriate and that the smallest possible grouping that would be appropriate was one including all of the Company's stores in the three New England states of Rhode Island, Connecticut, and Massachusetts, but not New York, a total of 45 stores (J.A. 22; 22-23). At the hearing on that petition, the following facts concerning the nature of the Company's operations were developed:

The Company, either directly or through subsidiaries, owns and operates a chain of 83 retail drug stores in Rhode Island, Massachusetts, Connecticut, New York, Kansas, and Oklahoma (J.A. 3, 154; 21, 26, 52). Its central office and warehouse are in Rhode Island; 25 drug stores are also in that state (J.A. 3, 154; 21, 25). With the exception of the Wakefield, R. I., store, the 25 stores are all located in the Providence-Pawtucket-Warwick Metropolitan area in the northeast section of the State. The Company has 13 and 7 stores, respectively, in the adjacent states of Massachusetts and Connecticut (J.A. 3, 154-155, 23). The Connecticut stores are 50 miles or more from the Rhode Island stores. Of the Massachusetts stores, four are located in Attleboro, Fall River and Somerset, within 8 miles of the Rhode Island stores; the others are more distant (J.A. 3, 154-155).

The central office maintains records and prepares the payroll for all 83 stores (J.A. 3, 153; 27, 136). The central warehouse provides all stores with much of their merchandise, but store managers buy various items from designated vendors (J.A. 155; 84).<sup>3</sup> A general store supervisor, acting under the Company treasurer, has all store operations under his general supervision (J.A. 84; 24-25, 85-87). In turn, the general store supervisor supervises seven "area" supervisors who assist store managers in solving

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<sup>3</sup> For example, store managers buy newspapers, magazines, books, lunch counter items, and certain drugs.

problems in store operation (J.A. 3; 43, 87). Three of these area supervisors service stores in the three New England States area, which are assigned to them not necessarily on a geographical area basis but by reason of convenience, workload, aptitude and special experience (J.A. 155; 88-89).

Although the individual store manager makes the initial decision to hire employees, the central office screens all employment applications (J.A. 156; 173). It also issues bulletins setting forth Company policy and operational guidelines for store managers and the duties and starting wages of all employees (J.A. 156; 57, 63, 67, 98, 101-102, 104). Policy bulletins sent to the various stores vary in accordance with the individual state laws (J.A. 63).

Day-to-day operations of the individual stores are under the store managers (J.A. 156; 54). Area supervisors visit stores infrequently, save when problems arise (J.A. 156; 56-57). Store managers determine the size of the store complement, hire their own sales clerks and recommend promotions (J.A. 156; 34-35, 39). Cosmeticians, clerks who work under the general supervision of the cosmetic supervisor, representing the central office, are hired both by the central office and by the store manager (J.A. 156; 89-90).

The 25 Rhode Island stores have about 280 clerks in all (J.A. 28-29). Customarily, each store has one stockman or stock clerk, usually male, who is hired by the central office. These are interchanged from store to store as part of their training, on promotion to store managers, and during vacations and emergencies (J.A. 156; 28-29, 77-82, 90). The 245 remaining clerks, mostly female, including the cosmeticians and soda fountain and lunch counter help, are rarely transferred to other stores (J.A. 157; 47-48, 55-57, 77-78, 89, 116-117).

A uniform vacation policy applies to all Rhode Island stores and five Massachusetts stores, but not to all stores elsewhere (J.A. 156; 70, 72). All store clerks get the same "PM's" or bonuses for sales of certain merchandise items (J.A. 156; 95-98). All full-time employees in the Rhode Island stores are covered by a single non-contributory health and accident plan (J.A. 156; 35, 76, 106, 113-115).

The State of Rhode Island has various laws regulating pharmacies and the employment of persons in retail drug stores. Thus, pharmacists must be registered by the State, maintain certain books, etc. (J.A. 158; 93, 192-215, S.A. 33-35). The State also imposes sales taxes which the employees must collect on each sale and payroll taxes which the Company pays to the State on behalf of the employees, as well as a minimum wage requirement (J.A. 158; 46, 60, 66-68, S.A. 33).

In addition, the State has laws regulating such areas as assignment of future wages (General laws, 28-15-1 to 28-15-9), discrimination because of age or sex (28-6-1 to 28-6-2), employees' trusts (28-17-1), a Fair Employment Practices Act (28-5-1 to 28-5-39), first aid (28-27-1), hours of employment (28-11-1, 28-3-11), sanitary conditions in the store (28-21-1, 2, 3, 4, 6, 9, 11, and 62), and garnishment and forfeiture of wages (10-5-8, 28-14-31).

There is no prior history of collective bargaining for any of the Company's employees in any of its stores (J.A. 157; 44). No other Union sought representation rights for any of the employees (J.A. 157; 19).

## **2. The decisions of the Regional Director and the Board**

On these facts, the Regional Director on June 16, 1966, concluded that the requested unit, limited to the Company's stores in the State of Rhode Island, was an inappropriate unit. Since, in his view, the Rhode



Island stores did not constitute an administrative division of the Company's operations, and there was nothing otherwise which would distinguish the stores in Rhode Island from the Company's nearby stores in the adjacent states of Connecticut and Massachusetts, all of which were under central operation and control, the Director ruled that the grouping sought by the Union was too narrow in scope, and ordered dismissal of the petition (J.A. 153-154).

Pursuant to Board Rule, Sec. 102.67(b), the Union sought Board review of the Director's decision, contending in effect that the decision was a departure from Board policy (J.A. 3, 153). On September 13, 1966, the Board granted review, and on May 12, 1967, the Board reversed the Regional Director and found that the unit limited to the Rhode Island stores was an appropriate unit. The Board acknowledged that the requested unit did not conform to any administrative division of the Company, and that many factors common to all the employees would support a finding of appropriateness of the unit proposed by the Company of the stores in the three New England states or even a company-wide unit. The Board also found that the stores in the Providence-Pawtucket-Warwick area would constitute an appropriate unit and that this grouping differed from the Union's proposed unit only in that it required the addition of one more store — that in Attleboro, Massachusetts. However, the Board concluded that the stores in the State of Rhode Island had a separate identity and community of interest not present in the out-of-state stores by virtue of the considerable state regulation of the retail drug business, including the related sale of cosmetics, food and other products, and that this factor was sufficient to support a finding that the Rhode Island stores also constituted a separate appropriate unit for purposes of collective bargaining. Since no other union sought representation in a different unit, the Board directed

an election in the Rhode Island stores unit<sup>4</sup> (J.A. 153-159).

### 3. The election and the Company's objections thereto

The election was held on June 9 and 10, 1967, and resulted in 137 votes for the Union, 105 against, and 26 challenges, not enough to affect the result of the election (J.A. 5; 160). Thereafter, the Company filed objections to the conduct of the election. In its objections, the Company alleged that the Union made improper and false claims to the employees in circulars distributed to the employees prior to the election (J.A. 161-162). Specifically, the Company challenged the statement in a leaflet mailed on June 5, 1967 (J.A. 165) that:

#### **REMEMBER**

**NO INITIATION FEES**

**NO DUES UNLESS YOUR PAY INCREASE *IS GREATER* THAN DUES  
A WRITTEN UNION CONTRACT PROTECTS YOUR JOB – GETS YOU  
PAY INCREASES, A GOOD HEALTH AND WELFARE PLAN, AND  
MANY OTHER BENEFITS**

**THINK WHAT THE RETAIL CLERKS UNION HAS DONE FOR EM-  
PLOYEES IN THE RETAIL INDUSTRY. WE ARE NEGOTIATING A  
\$1.75 PER HOUR RATE IN THE DISCOUNT CONTRACT. WE HAVE  
JUST RECENTLY COMPLETED A HEALTH AND WELFARE PLAN  
WHICH GIVES OUR MEMBERS, (full & part time), UP TO \$7500.00  
LIFE INSURANCE, UP TO \$70.00 PER WEEK WHILE OUT SICK,  
HOSPITAL RATE OF \$27.00 PER DAY, \$300.00 SURGICAL FEE,  
\$5.00 PER DAY FOR DOCTOR'S CALLS AND UP TO \$10,000.00  
FOR MAJOR MEDICAL. VACATIONS WITH PAY FOR PART TIME  
AS WELL AS FULL TIME EMPLOYEES. HOLIDAY PAY FOR PART  
TIME AS WELL AS FULL TIME EMPLOYEES.**

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<sup>4</sup> The unit was described as:

All full-time and regular part-time employees employed at the Employer's drug stores located in the State of Rhode Island, including post office sub-station employees, but excluding pharmacists, store managers and assistant managers, guards, and all other supervisors as defined in the Act.

The Company contended (J.A. 161-162) that by this communication the Union, at a time when the employer could not make effective reply,

1. Falsely represented that all its members were covered by the health and welfare plan above described;
2. Represented that Company employees could enjoy Union membership which would include the health and welfare plan without cost to them until or unless the Union obtained a wage increase greater than the amount of Union dues; and
3. Represented that Company employees could have all of the advantages of Union membership at no charge to them until and unless the Union secured them a wage increase greater than the amount of Union dues.

The Company also attacked a statement made in a leaflet mailed on June 2, 1967, which stated (J.A. 166) that:

*RETAIL CLERKS UNION LOCAL 1325 RECORD*  
*THE FOLLOWING ARE TRUE FACTS NOT FICTION*

*	*	*	*	*
B. PAID HOLIDAYS	WHO GETS THEM?	EVERYBODY.		
TEN A YEAR				
*	*	*	*	*
E. SICK LEAVE	SIX WEEKS FULL PAY			
*	*	*	*	*

The Company objected (J.A. 162) that by this leaflet

The Union falsely represented that all employees represented by it get paid for ten (10) holidays each year, [and] that all employees get six (6) weeks full pay for sick leave . . . .

Pursuant to Board Rule, Sec. 102.69(c), the Regional Director conducted an investigation of the issues raised by the objections, and gave the parties full opportunity to submit evidence pertinent to those issues.

#### 4. The Regional Director's report on the Company's Objections and the Certification of the Union

On July 18, 1967, the Regional Director issued his report on the Company's objections. With respect to the Union's promise in the June 5 leaflet to waive dues until it obtained a wage increase greater than the amount of its dues, the Director found no improper interference in such a pledge. With respect to the Company's assertion that the same circular "falsely" represented that "all" of the Union's members were covered by the described Health and Welfare Plan, the Director noted that (1) the Union, in fact, has such a plan giving even greater benefits with one employer, and (2) the circular did not claim that "all" of the Union's members enjoyed such benefits. Furthermore, since the statement was made in the course of a discussion by the Union concerning its achievements in "negotiating" collective bargaining agreements, employees would readily understand that such benefits could not be obtained merely through Union membership, but rather only through success in bargaining (J.A. 163).

With respect to the Union's claim in its June 2 leaflet that "everybody" in a unionized store gets 10 paid holidays and sick leave consisting of 6 weeks full pay, the Director found that each of these benefits was contained in at least one contract the Union had with other employers. While finding that the claim that "everybody" had such a benefit was "exaggerated," the Director found (1) that it was not a substantial departure from the truth, and (2) the Company had ample time prior to the election to respond to the claim if it wished to do so. Accordingly, the Director found that none of the statements would warrant overturning the election. He, therefore, overruled them and certified the Union as the bargaining representative of the Rhode Island stores' employees (J.A. 163-164).

The Company filed with the Board a "Request for Review" of the Regional Director's Decision (J.A. 167). It repeated the arguments it made

before the Regional Director, and contended in addition that the Health and Welfare Plan and other benefits in question did not apply, in the described terms, to part-time employees, and questioned whether there was any union contract providing for 6 weeks sick leave. It also complained of the lack of a hearing. On September 1, 1967, the Board denied the Request for Review, "as it raises no substantial issues warranting review" (J.A. 180).

#### B. The unfair labor practice proceeding

The Company admittedly refused to bargain with the Union (J.A. 182-183, 186). Upon the filing of charges, the General Counsel issued a complaint, alleging that the refusal was a violation of Section 8(a)(5) of the Act, and moved for Summary Judgment on the ground that the Company, by its refusal to bargain, was merely seeking to contest further the issues raised by it in the representation case, and that such matters are not subject to relitigation in the unfair labor practice proceeding. The Company resisted the Motion for Summary Judgment, contending that it had "newly discovered" and "previously unavailable" evidence (J.A. 2, 189). The "evidence" consisted of a copy of the "Standard Metropolitan Statistical Area," which showed, *inter alia*, that portions of the State of Massachusetts are included in the Metropolitan area of Providence-Pawtucket-Warwick, and a copy of Title 5, Chapter 19, of the Rhode Island laws, involving the regulation of pharmacists, which supposedly showed that this Chapter had no bearing on the working conditions of non-pharmacist employees. The Company claimed that the Board was in error in finding that only one of the Company's stores in Rhode Island was beyond the Providence-Pawtucket-Warwick area, the correct number allegedly being three. It also asserted that it now possessed copies of all of the Union's contracts and that they showed that the Union had not obtained the benefits it claimed to have in its campaign leaflets. In view of the assertion

that the evidence was "newly discovered," the General Counsel's Motion for Summary Judgment was denied and a hearing directed (J.A. 189).

At the hearing, both the copy of the "Standard Metropolitan Statistical Area," and the Title of the Rhode Island laws, were received in evidence (J.A. 128). The Company also showed that between the time of the hearing in the representation case (May 1966) and the Board's Decision (May 1967) the Company opened two additional stores in the State of Rhode Island, one in Middletown and one in Westerly, neither of which was in the Providence-Pawtucket-Warwick area. Employees in these stores voted in the election. The facts concerning the opening of these stores were never brought to the Board's attention prior to the Board's direction of election (J.A. 6-7; 130-132, 137, 139-141). The Examiner refused to allow the Company to examine a union official concerning the contents of union contracts on the ground that such matters had been decided in the prior representation case (J.A. 141-144).

## II. THE BOARD'S CONCLUSIONS AND ORDER

In agreement with the Trial Examiner, the Board found that none of the evidence produced in the unfair labor practice hearing had any impact on the validity of the Board's unit determination (J.A. 13, 7-9). Accordingly, the Board concluded that the Company violated the Act by its admitted refusal to recognize the Union (J.A. 13, 1).

The Board's order requires the Company to cease and desist from refusing to bargain with the Union. Affirmatively, the Company is directed to bargain with the Union upon request, and to post the customary notices. The Board rejected the request of the Union that the Company be ordered additionally to compensate its employees for any monetary losses they may have suffered by virtue of its refusal to bargain, or that the

Company be directed to restore any working conditions unilaterally changed since the Union's certification (J.A. 13-14, n. 1, 10-12).

## ARGUMENT

### I. THE BOARD'S DETERMINATION THAT A UNIT LIMITED TO THE EMPLOYEES IN ALL OF THE COMPANY'S RETAIL STORES IN THE STATE OF RHODE ISLAND WAS AN APPROPRIATE BARGAINING UNIT CONSTITUTED A REASONABLE EXERCISE OF THE BOARD'S DISCRETION AND WAS NEITHER ARBITRARY NOR CAPRICIOUS

Section 9(b) of the Act provides that "the Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." It is by now well established that, as this Court said in *Retail, Wholesale & Department Store Union v. N.L.R.B.*, U.S. App. D.C. , 385 F.2d 301, 305 (1967):

Once the Board determines the unit appropriate to insure employees the fullest freedom in exercising the rights guaranteed by the Act, absent irrational and arbitrary action by the Board the matter "is beyond our power of review." *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485, 491, 67 S. Ct. 789, 793, 91 L. Ed. 1040 (1947); *May Department Stores Co. v. N.L.R.B.*, 326 U.S. 376, 380, 66 S. Ct. 203, 90 L. Ed. 145 (1945).

Accord: *Mueller Brass Co. v. N.L.R.B.*, 86 U.S. App. D.C. 153, 155-156, 180 F.2d 402, 404-405 (1950).

Moreover, it is also well settled that in any given situation more than a single grouping of employees may be appropriate, and there is no concept of a "more" or "most" appropriate unit. Therefore, once it is found



that the unit sought is *an* appropriate unit, the fact that there may be other appropriate units as well does not detract from the correctness of the finding. The Board "may choose from among several appropriate units." *N.L.R.B. v. Local 19, Int'l Bro. Longshoremen (Chicago Stevedoring Co.)*, 286 F.2d 661, 664 (C.A. 7, 1961), cert. denied, 368 U.S. 820. Accord: *Retail, Wholesale, etc. Union, supra*, 385 F.2d at 305; *Mueller Brass Co. v. N.L.R.B., supra*, 86 U.S. App. D.C. at 156, 180 F.2d at 405; *N.L.R.B. v. Western & Southern Life Ins. Co.*, 391 F.2d 119, 122 (C.A. 3, 1968); *Florence Printing Co. v. N.L.R.B.*, 333 F.2d 289, 291 (C.A. 4, 1964); *N.L.R.B. v. Schill Steel Products, Inc.*, 340 F.2d 568, 574 (C.A. 5, 1965); *N.L.R.B. v. Dewey Portland Cement Co.*, 336 F.2d 117, 118-119 (C.A. 10, 1964). We show below that the Board's determination here that a unit confined to the Company's Rhode Island stores is appropriate was not irrational and arbitrary but rather a reasonable exercise of the Board's broad discretion in such matters.

In *Haag Drug Co.*, 169 NLRB No. 111, 67 LRRM 1289 (1968), the Board restated its policies with respect to the question of appropriate unit or units in the case of retail chainstore operations. Noting that retail chain operations "are marked by a high degree of centralized administration," 67 LRRM at 1291, the Board nonetheless reaffirmed its basic view that a single store in a multi-location enterprise is "presumptively" an appropriate unit, but that such a presumption can be overcome, where, for example, the single store "lacks meaningful identity as a self-contained economic unit," 67 LRRM at 1290, 1292.<sup>5</sup> The Board also pointed out, however, that regardless of whether single store units are appropriate or not in a particular case,

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<sup>5</sup> Compare in this regard *Star Market Co.*, 172 NLRB No. 130, 68 LRRM 1497 (1968) and *Pep Boys*, 172 NLRB No. 23, 68 LRRM 1308 (1968), with *Kostel Corp.*, 172 NLRB No. 167, 68 LRRM 1561 (1968).

a group of retail outlets . . . [may] likewise constitute an appropriate bargaining unit. Under conventional criteria governing the establishment of bargaining units, a unit composed of two or more retail outlets would also be an appropriate unit if there were a sufficient degree of geographic or administrative coherence, and common interests of employees in the outlets.

Accord: *Weis Markets, Inc.*, 142 NLRB 708, 710 (1963). That various groupings of retail stores, formed on the basis of these criteria, may constitute appropriate units has not been judicially questioned, nor does the Company appear to question it here, compare *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 152-153, 164-166 (1941); the main controversies have involved the issue of whether a single store could constitute an appropriate unit by itself as against contentions that the only unit that could be appropriate was one embracing many or all stores.<sup>6</sup>

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<sup>6</sup> See *N.L.R.B. v. Sun Drug Co.*, 359 F.2d 408, 410-413 (C.A. 3, 1966) (one store in a chain of 53 drug stores appropriate); *N.L.R.B. v. Winn-Dixie Stores, Inc.*, 341 F.2d 750, 751, 755-756 (C.A. 6, 1965), cert. den., 382 U.S. 830 (one store in chain of 33 grocery stores appropriate); *N.L.R.B. v. Mermer Lumber and Hardware Company*, 345 F.2d 770, 771-772 (C.A. 9, 1965), cert. den., 382 U.S. 942 (one hardware store appropriate even though Company had another store 4 miles away); *Primrose Super Market of Salem, Inc.*, 148 NLRB 610, 613-617 (1964), enf. without opinion, 58 LRRM 2863 (C.A. 1, 1965), cert. denied, 382 U.S. 830, rehearing denied, 353 F.2d 675 (one store in a five store chain appropriate); *Banco Credito y Ahorro Ponceno v. N.L.R.B.*, 390 F.2d 110, 112 (C.A. 1, 1968) (one of 29 bank branches appropriate; unit composed of all 13 branch banks in San Juan also held appropriate); *N.L.R.B. v. Dee's of New Jersey, Inc.*, 395 F.2d 112, 114 (C.A. 3, 1968) (one of three appliance stores appropriate); *N.L.R.B. v. Frisch's Big Boy Ill-Mar, Inc.*, 356 F.2d 895, 897 (C.A. 7, 1966) (one restaurant in chain of 10 in Indianapolis held not appropriate; implication that all 10 would be appropriate); *N.L.R.B. v. Purity Food Stores, Inc.*, 376 F.2d 497, 500-501 (C.A. 1, 1967), cert. denied, 389 U.S. 959 (one store in 7 store supermarket chain held not appropriate; implication that all 7 stores would be appropriate); *N.L.R.B. v. Davis Cafeteria, Inc.*, 396 F.2d 18, 20 (C.A. 5, 1968) (two of Company's 8 cafeterias in Miami held not appropriate; implication that all 8 would be appropriate). Although the Board respectfully disagrees with the holdings in the last three cases, it is not necessary to consider their validity here, since, as shown *infra*, the issue is not the

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Applying these principles to the facts presented in the instant case, the Board found that, because of the Company's centralized control, supervision and operation of its stores, similarity in the working conditions of its employees and the geographical locations of the stores, various groupings of two or more of the Company's stores would be appropriate. Specifically, the Board stated that either (1) all of the stores throughout the country, or (2) all of the stores in the three New England States region or (3) all of the stores in the compact Providence-Pawtucket-Warwick Metropolitan area, would each be appropriate (J.A. 157). The Board also concluded that the unit sought by the Union, composed of all of the Company's stores in the State of Rhode Island, constituted yet another appropriate grouping because the employees there had, in addition to the factors of centralized administration and geographical cohesiveness, a particular community of interest not shared with the Company's other employees in the adjacent states, namely the close regulation by the State of Rhode Island of the retail drug businesses within its borders. We submit that the Board's

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appropriateness of one or a few stores but the appropriateness of all of the Company's Rhode Island stores.

For analogous cases involving the offices of insurance companies, see *N.L.R.B. v. Western and Southern Life Insurance Company*, 391 F.2d 119, 122 (C.A. 3, 1968) (two district offices in two different cities each held appropriate, as against other groupings of more offices which "also appear to be appropriate"); *N.L.R.B. v. Quaker City Life Insurance Company*, 319 F.2d 690, 692-694 (C.A. 4, 1963) (single district office held appropriate out of possible state or nation-wide unit); *N.L.R.B. v. American Life and Accident Ins. Co. of Kentucky*, 394 F.2d 616, 617 (C.A. 6, 1968), pet. for cert. pending No. 347 this term (two district offices in Cleveland appropriate); *N.L.R.B. v. Equitable Life Insurance Co.*, 395 F.2d 750 (C.A. 6, 1968), pet. for cert. pending No. 361 this term (three district offices in or near Cleveland appropriate). But see *State Farm Insurance Co. v. N.L.R.B.*, \_\_\_ F.2d \_\_\_, 68 LRRM 3029, 3033-3034 (C.A. 7, 1968), pet. for rehearing *en banc* pending (two groupings of offices in New York area held inappropriate; implication that state-wide or region-wide unit would be appropriate).

conclusion, that the presence of these factors, particularly the element of state regulation, warranted a finding of appropriateness of the requested state-wide unit, is wholly rational and not arbitrary.

The appropriateness of state-wide bargaining units cannot be seriously doubted. In view of the general impact which political boundaries have on all citizens, and the separate community of interest they create for everyone living within them, it is only natural that such lines may constitute a reasonable point of demarcation in fixing the borders of collective bargaining units. Particularly is this true where the State has undertaken to legislate concerning matters bearing directly on those who are members of the proposed unit. Such persons have a separate and distinct interest not only in the existing laws governing their working conditions but in any future laws the state may enact for their welfare. Plainly, these differences between the citizens of individual states afford a rational basis for their division into separate bargaining units, even though other similarities between them may also warrant combining them. Moreover, while there are relatively few cases dealing with the appropriateness of units state-wide in scope, the Board for many years has acknowledged – and there are no judicial pronouncements to the contrary – that such units may be, in the circumstances of a given case, appropriate.<sup>7</sup> See *Retail, Wholesale, & Department Store Union v. N.L.R.B.*, *supra*, 385 F.2d at 305.

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<sup>7</sup> *Colonial Life Insurance Company of America*, 42 NLRB 1177, 1182 (1942); *Metropolitan Life Insurance Company*, 43 NLRB 962, 968 (1942); *Western and Southern Life Insurance Company*, 65 NLRB 855, 857-858 (1946). In 1961, the Board in *Quaker City Life Insurance Company*, 134 NLRB 960, 961-962, abandoned the rule that *only* state-wide units could be appropriate and held that groupings of insurance offices less than state-wide in scope could also be appropriate. A state-wide unit, however is still regarded as a possible appropriate unit. See the discussion in *Metropolitan Life Insurance Company*, 156 NLRB 1408, 1417 (1966). It was the Board's rejection of the rule that *only* state-wide units could be appropriate which led to the litigation recounted *supra*, p. 16.

In view of the foregoing, we submit that a state-wide unit of the Company's drug stores in Rhode Island is appropriate. That some combination of the Company's stores is warranted, based on the Company's centralized administration, is not only not challenged but in fact urged by the Company. That a grouping limited to the stores in Rhode Island is appropriate is clear in view of the extensive state regulation of the stores. Thus, as shown *supra*, p. 6, the State has imposed many duties and requirements on pharmacists, such as registration, bookkeeping, etc.<sup>8</sup> Moreover, the State's numerous laws bearing on the sale of cosmetics, food and other products and the other employee activities carried on in the stores, such as sales and payroll taxes, minimum wages, assignments of wages, discrimination, hours of work and sanitary conditions in the stores, have a distinct impact on the Company's employees in the State and create a separate community of interest for them, not only as regards the existing laws but in any changes that may be effected in them. These individual interests are more than ample to justify segmentation of these employees.

The Company's complaint, that the Board in its decision failed to specify exactly the laws of the State of Rhode Island of which it was taking notice, does not indicate how such an omission affected the ultimate validity of the Board's decision. The substance of many of the State's laws in question was developed in the course of the hearing in the representation case through the testimony of the Company's own official, as the record references, *supra*, p. 6, show. There is no doubt that the

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<sup>8</sup> Although it is true, as the Company notes, that pharmacists are not in the unit certified here, the regulation of the pharmacists necessarily extends to those that the pharmacists work with. For example, the restriction of certain duties to the pharmacists, such as dispensing, preparation and packing of drugs (General laws, 5-19-19, 5-19-26) and the prohibition against unauthorized persons carrying on such duties (5-19-33), constitutes an obvious limitation on the work which the non-pharmacist sales personnel in the unit may perform.

Board may take notice of such laws. *N.L.R.B. v. M. L. Townsend*, 185 F.2d 378, 381 (C.A. 9, 1950), cert. denied, 341 U.S. 909; *Jannenga v. Nationwide Life Ins. Co.*, 109 U.S. App. D.C. 385, 387, 288 F.2d 169, 171 (1961). The Company has made no showing that the Board's view of those laws is incorrect. In fact, the copy of the Rhode Island law relating to pharmacists which the Company placed in the record at the unfair labor practice hearing fully confirms the Board's view of that law. Under these circumstances, the Company cannot demonstrate that its rights have been in any way prejudiced.

The Company's contention that the state-wide unit is not proper because it is based solely on the Union's extent of organization, in violation of Section 9(c)(5) of the Act, is without merit. While it is true that the Board did give consideration to the scope of the unit sought by the Union and the fact that no other union petitioned for a larger unit, it is settled that the Board may give weight to such factors, providing they are not, as the statute states, made "controlling." *Retail, Wholesale & Department Store Union v. N.L.R.B.*, *supra*, 385 F.2d at 306. Here, it is plain that the Board found the state-wide unit appropriate, based on the factors of centralized administrative control, geography, and state regulation. Since the appropriateness of the unit is fully established by these factors, the Board is not precluded from directing an election in it because there are other possible appropriate units or because the Union, in petitioning for this particular unit, may have been guided by its own extent of organization. *Metropolitan Life Ins. Co. v. N.L.R.B.*, 328 F.2d 820, 825-826 (C.A. 3, 1964), vacated on other grounds, 380 U.S. 523 (1965); *Overnite Transportation Company v. N.L.R.B.*, 327 F.2d 36, 40 (C.A. 4, 1963); *N.L.R.B. v. Western and Southern Life Insurance Company*, *supra*, 391 F.2d at 122; *N.L.R.B. v. Equitable Life Ins. Co.*, *supra*, 395 F.2d 750.



The Company's further argument that the Board in its decision erroneously stated that all but one of the Company's Rhode Island stores were within the Providence-Pawtucket-Warwick Metropolitan area, is entirely misdirected. In the first place, the statement was, as shown, *supra*, p. 4, 12, true as of the time of the hearing in the representation case. The fact that the Company opened two more stores outside the Metropolitan area between the time of the hearing and the decision was never brought to the Board's attention, with the result that the Board had no way of knowing that there had been any change in the number and location of the Company's stores. In any event, the issue is totally irrelevant. The Board's reference to the number of stores outside the Metropolitan area was simply for the purpose of demonstrating the similarity in actual fact (as the Board believed those facts to be) between the state-wide unit sought and a unit limited to the Metropolitan area, which the Board regarded as also appropriate. However, the appropriateness of the state-wide unit does not depend on its similarity to the Metropolitan area unit but rather, as shown, *supra*, pp. 16-18, on the regulation by the state of the retail drug businesses within it. Therefore, even if the Board's comparison of the two units were mistaken (and the difference seems trivial), the correctness of the Board's unit findings are in no way impaired. For the same reasons, the Company's attack on the Board's use of the Standard Metropolitan Statistical Area publication as the basis for its conclusion that the Providence-Pawtucket-Warwick area was also an appropriate unit is beside the point. Assuming for the sake of argument that the Board's use of that publication was improper,<sup>9</sup> the correctness of the Board's conclusion as to that unit is not in issue here. The sole issue is the appropriateness of the state-wide unit in which the election was held and the union certified.

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<sup>9</sup> We fail to see, however, how the Board's use of this standard reference work could be in any way improper.



Finally, the Company's contention that the Board, in granting the Union's request for review of the Regional Director's decision in the representation case, failed to comply with its Rules and Regulations, thereby rendering its own decision and all subsequent proceedings a nullity, is totally without merit. Board Rule, Sec. 102.67(c), states that the Board will grant review only where compelling reasons exist therefor. The enumerated grounds, *inter alia*, are:

- (1) that a substantial question of law or policy is raised because of (a) the absence of, or (b) a departure from, officially reported Board precedent.

While it is true that, as the Company indicates, the Union in its request for review did not expressly assert that it was seeking review under the ground stated above, it is apparent from a reading of its request as a whole that it believed review was warranted on this basis (J.A. 222-235), and the Board so treated it (J.A. 153). Hence, there was substantial compliance with the Rules and no error in granting the request for review. Moreover, there is no sound reason why the Board, in determining whether to grant review, should be bound by the particular formulary of words used in the request for review. The Board acts to vindicate public and not merely private rights. If the request presents a case which the Board in its judgment believes requires review under its published standards, the Board's exercise of its powers is not dependent on such a trivial defect as the failure to note, in the request for review, the particular ground on which review is or might be appropriate. That the matter was an important one justifying review is apparent in view of the Board's ultimate reversal of the Director's decision.

## II. THE BOARD PROPERLY OVERRULED THE COMPANY'S OBJECTIONS TO THE ELECTION

Where a party seeks to overturn the result of an election, the burden is not on the Board to establish the validity of the election; it is incumbent

on the objecting party to show with specific evidence that the election was not fairly conducted. *N.L.R.B. v. Mattison Machine Works*, 365 U.S. 123, 124 (1961); *N.L.R.B. v. Douglas County Elec. Corp.*, 358 F.2d 125, 129 (C.A. 5, 1966). The burden thus assumed is a "heavy" one, *Shoreline Enterprises v. N.L.R.B.*, 262 F.2d 933, 942 (C.A. 5, 1959), for "the results of a secret ballot, conducted under Government sponsorship and with all the safeguards which have been developed throughout the years, should not be lightly set aside." *The Liberal Market, Inc.*, 108 NLRB 1481, 1482 (1954).

Moreover, "Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees." *N.L.R.B. v. Capital Transit Co.*, 95 U.S. App. D.C. 310, 311, 221 F.2d 864, 865 (1955), quoting from *N.L.R.B. v. A. J. Tower Co.*, 329 U.S. 324, 330 (1946). And as the Court added in *N.L.R.B. v. National Truck Rental Co.*, 99 U.S. App. D.C. 259, 262, 239 F.2d 422, 425 (1956), cert. denied, 352 U.S. 1016: "Certainly, the Board is far better able than we to appraise the atmosphere surrounding an election . . . ." We show below that the Board did not abuse its discretion in declining to set the election aside.

#### A. The objection based on the Union's promise of a waiver of dues

As noted *supra*, p. 8, the Union promised in its June 5 election leaflet that it would not collect dues until it secured a pay increase for the employees that was greater than the amount of its dues. The Director's conclusion that such a pledge did not warrant upsetting the election is entirely consistent with the settled rule that waivers of Union initiation fees during organizational campaigns are permissible, at least where they are not conditioned on the outcome of the election and are available

to all employees without restriction for a reasonable time after the election. *N.L.R.B. v. Gorbea, Perez & Morell, S. en. C.*, 328 F.2d 679, 682 (C.A. 1, 1964); *Amalgamated Clothing Workers of America v. N.L.R.B.*, 345 F.2d 264, 268-269 (C.A. 2, 1965); *N.L.R.B. v. Gilmore Industries, Inc.*, 341 F.2d 240, 242 (C.A. 6, 1965); *N.L.R.B. v. Gafner Automotive & Machine, Inc.*, F.2d , 69 LRRM 2002, 2003-2004 (C.A. 6, No. 17,486, decided August 16, 1968); *N.L.R.B. v. I. Taitel and Son*, 261 F.2d 1, 4 (C.A. 7, 1958), cert. denied, 359 U.S. 944; *Macomb Pottery Company v. N.L.R.B.*, 376 F.2d 450, 454-455 (C.A. 7, 1967); cf. *N.L.R.B. v. Continental Nut Company*, 395 F.2d 830, 831 (C.A. 9, 1968).<sup>10</sup> The Company's argument that these cases are not relevant because they involved initiation

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<sup>10</sup> The Board now takes the position that a promised waiver of an initiation fee, even where conditioned on the outcome of the election, is not a ground for setting aside the election. *Dit-MCO, Inc.*, 163 NLRB No. 147, 64 LRRM 1476 (1967), cited with apparent approval in *Collins & Aikman Corporation v. N.L.R.B.*, 383 F.2d 722, 730, n. 8 (C.A. 4, 1967). It is not necessary to pass on this question here, for as shown *infra* the waiver of dues was not in any way conditional on the outcome of the election.

In *Gilmore* and *Gorbea*, *supra*, the respective courts, while affirming the principle stated above, found union conduct to have been improper under the circumstances of those cases. Thus, in *Gilmore*, the union disingenuously accepted the benefit of a rumor that its normal initiation fee, which was being waived, was \$300; actually it was \$6. In *Gorbea*, the court found a positive misrepresentation that the union would waive its initiation fee when actually there was no initiation fee.

This Court's decision in *Truck Drivers and Helpers, Local Union 568 v. N.L.R.B.*, 126 U.S. App. D.C. 360, 368, n. 15, 379 F.2d 137, 145, n. 15 (1967), is also not to the contrary. In that case, the Court merely noted the possibility that "A union's promise of benefit may be as disruptive of free choice as a threat, and may exert no less restraining influence," citing *Gilmore* and *Gorbea*. All union "promises of benefits," however, do not have a significant impact on free choice, and as both *Gilmore* and *Gorbea* indicate, unconditional waivers of initiation fees are of that nature. To be distinguished in this regard is *Wagner Electric Corp.*, 167 NLRB No. 75, 66 LRRM 1073 (1967), on which the Company relies. There, the union offered a gift of a free life insurance policy as an inducement to join. Finding such an offer to have affected the employees' free choice, the Board held *Dit-MCO* inapplicable because,

Where there is a waiver of initiation fees, there is no enhancement of the employees' economic position, but merely an

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fees rather than dues has no substance. Dues and fees are both simply aspects of an employee's union financial membership obligations and a waiver of either would have the same impact or lack of it on the employee. Since the Union's promise of a waiver of dues here was unconditional and available to all, the Board's conclusion that it had no significant impact on the conduct of the election is entirely reasonable.

**B. The objections based on the Union's  
alleged misrepresentations in  
its campaign propaganda**

As set forth *supra*, pp. 8-9, the Company objected that in a leaflet mailed on June 5, 4 days prior to the election, the Union falsely stated that "all its members" were covered by a particular health and welfare plan, and that in another leaflet mailed on June 2, 7 days before the election, the Union falsely claimed that "all employees represented by it" enjoyed 10 holidays and 6 weeks sick leave. The Director, however, found that the Union had the health and welfare plan as described with one chain, that the June 5 leaflet did not assert that "all" members were covered by the plan, and that other parts of the leaflet made clear that an employee did not receive the health and welfare plan automatically by virtue of membership in the Union but rather through collective bargaining. He also found that at least one — but not all — union contracts provided for 10 holidays and 6 weeks sick leave. Accordingly, he found that the statements were at most ambiguous and exaggerated, and that in the case of the June 2 leaflet, the Company

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avoidance of a possible future liability. Moreover, such waiver is a customary practice in organizing campaigns. In contrast, the gift of immediate life insurance coverage is a tangible economic benefit and is most unusual.

It is our view that the gift of life insurance coverage to the prospective voter is more akin to an employer's grant of a wage increase in anticipation of a representation election than it is to a waiver of union initiation fees and that it subjects the donees to a constraint to vote for the donor union.

had an adequate opportunity to respond to it. In these circumstances, he concluded that the statements did not warrant setting aside the election. We submit that this decision is entitled to acceptance by this Court.

In general, the Board does not undertake to "police or censor propaganda used in the elections it conducts, but rather leaves to the good sense of the voters the appraisal of such matters, and to the opposing parties the task of correcting inaccurate and untruthful statements." *Stewart-Warner Corporation*, 102 NLRB 1153, 1158 (1953). However, the Board has set some limits on preelection propaganda. In *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, 223-224 (1962), the Board summarized its views as to when misstatements will be found to have affected employees' free choice. The Board there stated that it will set aside an election only where the misstatement is a substantial departure from the truth concerning a material fact, occurs at a time when the other party cannot make an effective reply, and may reasonably be expected to have a significant impact on the outcome of the election. Ambiguous, exaggerated or vaguely worded claims will not suffice to set the election aside. These criteria have been approved by this and other courts. *United Steelworkers of America v. N.L.R.B.*, U.S. App. D.C. , 393 F.2d 661, 664 (1968), and cases cited; *Russell-Newman Manufacturing Co., Inc.*, 158 NLRB 1260, 1263-1265 (1966), enf. without opinion (C.A.D.C., Nos. 20,217 and 20,415, decided April 12, 1967).

Applying these standards to the present case, it is plain that the Board properly held that the alleged misrepresentations did not justify upsetting the election. Contrary to the Company's position, the June 5 circular neither states nor implies that "all" of the Union's members are covered by the health and welfare plan. Moreover, the circular's statement that a "written union contract . . . gets you . . . a good health and welfare plan," and the general context of contract negotiation in which the reference to

the health and welfare plan appears clearly conveyed the idea that coverage in such plans is obtained not through union membership as such but through success in collective bargaining. Accordingly, there is little if any basis for finding any misrepresentation in the leaflet. In any event, the most that can be said for the statement is that it is ambiguous in that it might be subject to the interpretation which the Company attempts to place on it. Similarly, the Union's claims in the June 2 leaflet about paid holidays and sick leave, while exaggerated to the extent that not every one of its contracts contains these benefits, are true in the sense that it has obtained benefits of this type for the employees it represents. These kinds of ambiguities or exaggerations, however, are not sufficient to set aside the election. *United Steelworkers of America v. N.L.R.B.*, *supra*; *Russell-Newman Manufacturing Co., Inc.*, *supra*; *Baumritter Corporation v. N.L.R.B.*, 386 F.2d 117, 119-120 (C.A. 1, 1967); *N.L.R.B. v. Louisville Chair Company*, 385 F.2d 922, 927 (C.A. 6, 1967), cert. den., 390 U.S. 1013; *Olson Rug Co. v. N.L.R.B.*, 260 F.2d 255, 256 (C.A. 7, 1958); *Macomb Pottery Company v. N.L.R.B.*, 376 F.2d 450, 453 (C.A. 7, 1967); *Follett Corp. v. N.L.R.B.*, \_\_\_ F.2d \_\_\_, 68 LRRM 2474, 2476 (C.A. 7, No. 16,221, decided June 10, 1968); *N.L.R.B. v. Red Bird Foods, Inc.*, \_\_\_ F.2d \_\_\_, 68 LRRM 2943, 2944-2945 (C.A. 7, No. 16,565, decided July 30, 1968).

As the Court stated in *Baumritter Corporation v. N.L.R.B.*, *supra*:

Reading the comparison from the standpoint of a company employee in the midst of an election campaign, we cannot say that it was misleading either in form or substance. It merely recited in graphic form what benefits this union claims it had gained for its members in other plants in the area and asked these employees to compare them with the non-union benefits they had. The union did not state that in any single contract it had achieved all of the benefits listed. We cannot say that this campaign propaganda was unfair or improper.

And as the Court added in *N.L.R.B. v. Red Bird Foods, Inc., supra*:

[W]e think the employees probably knew that a contract had to be negotiated before any benefits would be obtained, even if the Union won the election.

Moreover, in the case of the June 2 leaflet, the Company had 1 week to reply to the Union's claims, if it wished to do so. This time was more than adequate for it to prepare and publish a refutation. Accordingly, even if the statements in that circular are held to be substantial misrepresentations, the fact that the Company had sufficient time to reply to them precludes reliance on them as a ground for upsetting the election. *N.L.R.B. v. Bata Shoe Company*, 377 F.2d 821, 828-829 (C.A. 4, 1967), cert. denied, 389 U.S. 917 (2 days' time enough); *General Electric Co., Specialty Control Dept. v. N.L.R.B.*, 383 F.2d 152, 153 (C.A. 4, 1967) (2 days' time enough); *Anchor Manufacturing Company v. N.L.R.B.*, 300 F.2d 301, 304 (C.A. 5, 1962) (1 day enough); *N.L.R.B. v. Louisville Chair Company, supra*, 385 F.2d at 927 (2 weeks' time sufficient); *N.L.R.B. v. Red Bird Foods, Inc., supra*, 68 LRRM at 2945 (2 weeks' time sufficient). The Company's argument that 7 days' time was not enough in view of the number of stores involved is belied by the fact that it did distribute material to its employees in the last week of the campaign after issuance of the Union's leaflet (J.A. 164). The fact that it may have been difficult to prepare a reply in the time available is immaterial. *N.L.R.B. v. Louisville Chair Company, supra*.

On appeal to the Board from the Regional Director's report the Company repeated its original contentions and raised additional objections to the two leaflets, stating that despite the assertions in the June 5 leaflet, part-time employees were not eligible for all of the listed benefits, and that in the case of the June 2 leaflet, part-time workers did not get full paid holidays. It also raised questions concerning the leaflet's statements



about vacations, claiming that contrary to the leaflet, an employee did not receive a vacation until after 1 year of employment. Since none of these objections were included in the matters originally filed with the Director,<sup>11</sup> they were not properly before the Board for its consideration. *Sears Roebuck and Company*, 115 NLRB 266, 270 (1956); *N.L.R.B. v. Realist, Inc.*, 328 F.2d 840, 842-843 (C.A. 7, 1964), cert. denied, 377 U.S. 994. In any event, at most the new objections merely raised additional instances in which the leaflets could be said to be ambiguous or exaggerated. As set forth, *supra*, pp. 24-27, such a showing is not enough.

### III. THE BOARD PROPERLY REFUSED TO DIRECT A HEARING ON THE COMPANY'S OBJEC- TIONS TO THE ELECTION

Although Section 9(c) of the Act requires that a preelection hearing be held to determine whether a question concerning representation exists, there is no statutory provision for post-election hearings.<sup>12</sup> The Board's established practice under its Rules and Regulations is to dispose of objections to elections on the basis of an administrative investigation and to hold post-election hearings only when "substantial and material factual issues" exist which can be resolved only after a hearing. Section 102.69(c) and (e), 29 C.F.R. 102.69(c) and (e). It is well settled that the qualified right to hearing provided by the Board's post-election procedures satisfies all statutory and constitutional requirements. *N.L.R.B. v. Air Control Products*, 335 F.2d 245, 249 (C.A. 5, 1964).

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<sup>11</sup> Board Rule, Sec. 102.69(a) requires that objections be filed within 5 days after the election.

<sup>12</sup> The hearing requirements of the Administrative Procedure Act are specifically inapplicable to proceedings for the "certification of worker representatives" (80 Stat. 384, 5 U.S.C. § 554(a)(6)).

In order to be entitled to a hearing, the "objecting party must supply the Board with specific evidence which *prima facie* would warrant setting aside the election." *N.L.R.B. v. O.K. Van Storage, Inc.*, 297 F.2d 74, 75 (C.A. 5, 1961); see also, *N.L.R.B. v. Douglas County Electric Corp.*, *supra*, 358 F.2d at 129. For it is "not up to the Board's staff to seek out evidence which would invalidate the election." *N.L.R.B. v. Douglas County Electric Corp.*, *supra*, 358 F.2d at 130. The above principles reflect the policy of avoiding lengthy and unnecessary hearings and comport with the statutory requirement that "questions preliminary to the establishment of the bargaining relationship be expeditiously resolved." *N.L.R.B. v. O. K. Van Storage, Inc.*, *supra*, 297 F.2d at 76. As the court pointed out in *N.L.R.B. v. Joclin Mfg. Co.*, 314 F.2d 627, 632 (C.A. 2, 1963), the Board's policy of "conditioning the right to a hearing on a showing that factual issues are 'substantial and material' [is] a requirement not only proper but necessary to prevent dilatory tactics by employers or unions disappointed in the election returns . . . ." Consequently, where a party seeking to overturn a representation determination presents evidence which does not raise substantial and material factual issues, it "has no cause for complaint when and if [its] demand for a hearing is denied." *N.L.R.B. v. O. K. Van Storage, Inc.*, *supra*, 297 F.2d at 76. Accord: *Baumritter Corporation v. N.L.R.B.*, *supra*, 386 F.2d at 120-121; *N.L.R.B. v. Certified Testing Laboratories, Inc.*, 387 F.2d 275, 278-279 (C.A. 3, 1967); *N.L.R.B. v. Carolina Natural Gas Corporation*, 386 F.2d 571, 574-575 (C.A. 4, 1967); *N.L.R.B. v. Disco Laboratories, Inc.*, 389 F.2d 663, 667-668 (C.A. 6, 1968); *N.L.R.B. v. National Survey Services, Inc.*, 361 F.2d 199, 204-208 (C.A. 7, 1966).

Although no post-election hearing was held in the present case, the Company was afforded full opportunity to submit evidence to the Regional Director in the course of the Director's investigation and to the Board by

way of its exceptions to the Director's report. To this considerable extent the Company was "heard" – it was accorded the right to present evidence to support its position, given notice of all adverse findings, and an opportunity to meet and rebut these findings. Cf. *Federal Communications Comm. v. WJR*, 337 U.S. 265, 273-276 (1949), and cases cited at 275, n. 9.

The "facts" as presented by the Company disclose no need for a hearing, since they do not, with one possible exception, differ from the underlying facts as found by the Director. Thus, the Director found in accordance with the Company's position that the Union did offer to waive its dues until it obtained a pay increase greater than the dues, and that the Health and Welfare plan and holiday benefits described in the Union's circulars were enjoyed by some but not all employees represented by the Union. The Company does not challenge these factual findings, only the inferences and legal conclusions which the Director and the Board drew from them. The only one of the Director's findings which the Company apparently questions is the statement that one Union contract does provide for 6 weeks' sick leave. Even assuming, however, that the Company's mere denial of the finding creates an issue of fact, and that the Company's version, if true, would show a substantial departure from the truth, it is clear that such a "fact" is immaterial since, as shown *supra*, p. 27, the June 2 leaflet in which the alleged misstatement was made was distributed at a time when the Company had sufficient time to refute it. It could not then, in any event, be a sufficient ground for overturning the election. In short, the Board has simply accepted the factual situation as posited by the Company, and determined that it discloses no improper interference with the election processes, a legal conclusion which, as we have shown, is correct. Since there are no "substantial and material" factual issues, the Board was not required to hold a hearing in this case. "If there is nothing to

hear, then a hearing is a senseless and useless formality." *N.L.R.B. v. Air Control Products, supra*, 335 F.2d at 249.<sup>13</sup>

#### IV. THE BOARD PROPERLY REFUSED TO ENTER THE ORDER REQUESTED BY THE UNION

The Union's argument that the Board, in order more effectively to redress the Company's unfair labor practice in refusing to bargain, should have ordered the Company to make the employees whole for any monetary losses they may have suffered in consequence of it, is without merit. In the first place, the record contains no evidence on which any such findings of losses could be based. Furthermore, as this Court said in rejecting an almost identical claim in *Retail, Wholesale & Department Store Union v. N.L.R.B.*, *supra*, 385 F.2d at 308:

The present case, however, does not serve as an appropriate vehicle for creation of unprecedented remedies. There was only one violation of the Act alleged and found. And that violation, the failure to bargain, was not born out of any general hostility on the Company's part to the unions or to the policies of the Act. The Company refused to bargain only to obtain judicial review of the Board's conclusions in the representation case. It was its only means of obtaining such review.

\* \* \* \* \*

Nor is there any evidence that the Company sought this review for the purpose of merely delaying the evil day when it would be required to bargain collectively. This was a serious appeal.

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<sup>13</sup> It is equally clear and well settled that in these circumstances the Board was also not required to permit the Company to relitigate these questions or to grant it a hearing on these matters in the unfair labor practice proceeding. *Amalgamated Clothing Workers of America v. N.L.R.B.*, 124 U.S. App. D.C. 365, 369-372, 365 F.2d 898, 902-905 (1966); *N.L.R.B. v. National Survey Services, Inc.*, *supra*, 361 F.2d at 204; *N.L.R.B. v. Air Control Products, supra*, 335 F.2d at 251-252; *S. D. Warren Co. v. N.L.R.B.*, 353 F.2d 494, 496-497 (C.A. 1, 1965), cert. denied, 383 U.S. 958.

As for the Union's contention that the Board should have ordered the Company to reinstate all conditions of employment unilaterally changed in a way detrimental to the employees since the Union's certification, the record does not show that any such changes were pleaded in the complaint or litigated in the proceeding. There was, then, no occasion for the Board to consider issuance of such an order.

### CONCLUSION

For the reasons stated above, the petition to review the Board's order should be denied, and a decree should issue enforcing the Board's order against the Company in full.

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SEPTEMBER 1968.

## SUPPLEMENTAL APPENDIX

[59] Q. The State of Rhode Island has a sales tax, Mr. Salmanson, is that correct? A. Correct.

Q. And your company is required to complete and to file with the state on a yearly or less than yearly basis records indicating amounts of sales tax received or paid or whatever? A. Correct.

Q. And those records are submitted on a statewide basis for all your stores in Rhode Island? A. Yes.

Q. Each year? A. (INDICATING.)

Q. And there is also—Are there payroll taxes in the State of Rhode Island which you must pay to the state? A. I'm quite sure there are, yes.

Q. And those records similarly would be prepared and submitted on a yearly basis or semi-annually? A. Yes, whatever the

[60] regulation is, state regulation is.

Q. For all the employees in your Rhode Island stores?  
A. Yes.

Q. And there are also, are there not, laws regulating the operation of pharmacies in the State of Rhode Island? A. There are, yes.

Q. And that would include each of your Rhode Island stores? A. Correct.

Q. And those regulations include not only control over the operation, and, in fact, the very existence of your drugstore in Rhode Island, but would extend to qualifications and registration for pharmacists employed in those stores?

MR. SHEEHAN: Objection.

HEARING OFFICER: What's the grounds of the objection?

MR. SHEEHAN: Well, the grounds for the objection is that the witness isn't an attorney. I'm perfectly willing to have him testify that there are laws governing pharmacies in Rhode Island, but I'm not as to the content of the law. I don't see that it makes any difference anyway.

HEARING OFFICER: I think your objection is valid on that ground, so to that extent I'll sustain the objection.

Q. You are concerned, are you not, Mr. Salmanson, with the opening and the staffing of your drugstores in the State of Rhode Island? A. I'm sorry, I didn't follow that.

[61] Q. You're concerned with the opening of new drugstores in the State of Rhode Island? A. Oh, yes. Yes.

Q. And with the staffing of those stores by pharmacists? A. Yes.

Q. And you are aware that state laws regulate to some degree the pharmacists you may place in those stores; they have to be registered in certain states, the state in which they're practicing? A. Yes.

Q. Now, there are also, are there not, laws which regulate, let me withdraw that. The rules governing your stores in Rhode Island are, of course, statutes of the State of Rhode Island, and they may or may not be similar to statutes covering the same area in stores you operate in Massachusetts and in Connecticut, is that so? A. Pertaining to what?

MR. SHEEHAN: Objection. Objection.

Q. Pertaining to the opening —

HEARING OFFICER: Objection —



MR. DOMESICK: I withdraw the question. You're right.

Q. Now, are there any state statutes regulating the non-pharmacists who work in your Rhode Island drugstores that you know of, other than the ones we've already touched upon, namely, payroll records?

\* \* \* \* \*

[149] MR. DOMESICK: In the advertisement you will see, indeed, there are stores outside the stores of Rhode Island which are being advertised. These are neighboring stores in the state of Massachusetts.

[150] However, the stores in Rhode Island each have a sizable one inch by two inch block approximately in which their name, street address, and perhaps telephone and registered pharmacist appears. It has Massachusetts stores and not every Massachusetts store. It has the name and address of the Massachusetts stores in a one line, one line or two line, smaller block. The physical layout would indicate the thrust of the advertisement.

MR. SHEEHAN: You know that is not what it indicates at all. You know that it is a state law that the pharmacist must be listed in any ad and that is not required in Massachusetts. Let's not becloud the issue.

HEARING OFFICER: You have articulated your position with respect to this question. I am going to allow the question.

MR. DOMESICK: I suggest at this point that whoever reads the record refer to Employer's Exhibit 15 which will show this from the prior hearing.

MR. SHEEHAN: We have asked that they be taken notice of. I certainly don't have any objection if he takes notice of them twice.

HEARING OFFICER: You may continue.



MR. DOMESICK: I withdraw the question. You're right.

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HEARING OFFICER: You may continue.

Q. (By Mr. Sheehan) Do you remember the question?

A. You want to know which stores have ads in the Providence journal.

[151] Q. Are listed in the Providence Journal or the Providence Evening Bulletin advertisement of the company?

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